

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

SAMUEL TUCCIO,

Plaintiff,

v.

FJC SECURITY SERVICES INC.,

Defendant.

Case No. 2:12 cv-12-05506-JFB-GRB

Declaration of Scott A. Weiss, Esq.

Scott A. Weiss, Esq., declares, pursuant to 28 U.S.C. §1746 (2013) under penalties of perjury as follows:

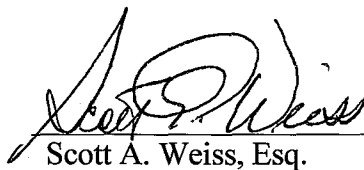
1. I am an attorney and counsel of record for Defendant FJC Security Services, Inc., Defendant in the above captioned matter. I am a member-attorney of Weiss & Weiss LLC and of counsel to Ingber Law Firm, PLLC which represents Defendant.
2. I am licensed attorney admitted and authorized to practice before the States of New York, Connecticut and Illinois. I am admitted to the Bar and authorized to practice before this Court.
3. I am familiar with proceedings had to date.
4. I submit this Declaration in Support of the Motion for Summary Judgment and Entry of Summary Judgment in Defendant FJC Security Services, Inc. in that there exists no genuine issues of material fact and Defendant is entitled Summary Judgment as a matter of law.
5. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint filed in this matter (Dkt# 1).

6. Attached hereto as Exhibit 2 is a true and correct copy of the Answer to the Complaint filed in this matter by Defendant FJC Security Services Inc (Dkt # 13).
7. Attached hereto as Exhibit 3 is true and correct copies of excerpts of the Deposition of James Donohue taken on August 22, 2013.
8. Attached hereto as Exhibit 4 is true and correct copies of excerpts of the Deposition of Gloria Noel taken on December 9, 2013.
9. Attached hereto as Exhibit 5 is true and correct copies of excerpts of the Deposition of Efrain Santiago taken on September 12, 2013.
10. Attached hereto as Exhibit 6 is true and correct copies of excerpts of the Deposition of Samuel Tuccio taken on August 15, 2013.
11. Attached hereto as Exhibit 7 is true and correct copies of excerpts of the Deposition of Frances Velazquez taken on September 12, 2013.
12. Attached hereto as Exhibit 8 is a true and correct copy of a 6 page Affidavit that Plaintiff produced in the discovery phase of this action that was submitted to the United States Government National Labor Relations Board (Dated: May 7, 2010).

[Signature follows...]

Dated: January 24, 2014

By:


Scott A. Weiss, Esq.

WEISS & WEISS LLC, Of Counsel
2000 Post Rd., LL 106
Fairfield, CT 06824
50 Main Street, 10th Floor
White Plains, New York 10606
(866) 277-2707/Fax: (203) 254-2725
Scott@weissnweiss.com
(SW0431)

Of Counsel to:
INGBER LAW FIRM, PLLC
Clifford J. Ingber, Esq. (CJI 7476)
6 Stallion Trail
Greenwich, Connecticut 06831
(203) 629-6170/ Fax: (203) 629-3954
Cjingber@ingberlawfirm.com

Attorneys for FJC Security Services Inc.

Declaration of Scott A. Weiss
EXHIBIT: 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Samuel Tuccio

CV 12 5506

COMPLAINT

NAME OF PLAINTIFF(S)

v.

FJC Security Services Inc.

NAME OF DEFENDANT(S)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 26 2012 ★

LONG ISLAND OFFICE
BIANCO, J.
BROWN, M. J.

This action is brought for discrimination in employment pursuant to (check only those that apply):



Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (race, color, gender, religion, national origin).

NOTE: In order to bring a suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.



Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub. L. No. 92-592, the Civil Rights Act of 1991, Pub. L. No. 102-166).

NOTE: In order to bring a suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.



Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117 (amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 and the Civil Rights Act of 1991, Pub. L. No. 102-166).

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.

Jurisdiction is specifically conferred upon this United States District Court by the
aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be
appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of
1991, Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

199 West Nicholai Street

Street Address

Nassau

County

NY

State

11801

Zip Code

516 938 4652

Telephone Number

2. Defendant(s) resides at, or its business is located at:

275 Jericho Turnpike

Street Address

Nassau

County

Floral Park

City

NY

State

11001

Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

JFK Cargo Center 75, Room 228

Street Address

Queens

County

Jamaica

City

NY

State

114430

Zip Code

4. The discriminatory conduct of which I complain in this action includes
(check only those that apply).

- ☐ Failure to hire.
- ☒ Termination of my employment.
- ☐ Failure to promote.
- ☐ Failure to accommodate my disability.
- ☒ Unequal terms and conditions of my employment.
- ☐ Retaliation
- ☒ Other acts (specify): Assigned to 3 undesirable assignments in a row(2 graveyard shifts and all 3 were outdoors)

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

5. It is my best recollection that the alleged discriminatory acts occurred on:
January 20, 2010
Date(s)

6. I believe that the defendant(s) (check one)

- ☐ is still committing these acts against me.
- ☒ is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:
(check only those that apply and state the basis for discrimination, for example,
what is your religion, if religious discrimination is alleged)

- ☒ race _____ [] color _____
- ☐ gender/sex _____ [] religion _____
- ☒ national origin _____
- ☐ disability _____
- ☐ age. If age is checked, answer the following:

I was born in _____. At the time(s) defendant(s) discriminated against me,

I was ☐ more ^{Year} ☐ less than 40 years old. (check one).

NOTE: *Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

8. The facts of my case are as follows:

See attached document outlining the facts.

See enclosed copy of my EEOC complaint.

(Attach additional sheets as necessary)

NOTE: *As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.*

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's alleged discriminatory conduct on: February 3, 2010.
Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct on: April 4, 2012.
Date

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity

Commission regarding defendant's alleged discriminatory conduct (*check one*):

☐

60 days or more have elapsed.

☐

less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (*check one*):

☐

has not issued a Right to Sue letter.

☒

has issued a Right to Sue letter, which I
received on August 1, 2012

Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney's fees.


PLAINTIFF'S SIGNATURE

Dated: October 26, 2012

199 West Nicholai Street

Address

Hicksville, NY 11801

516 938 4652

Phone Number

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Samuel Tuccio**
199 West Nicholas
Hicksville, NY 11801

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2010-02241

Holly M. Woodyard,
Investigator

(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Kevin J. Berry,
District Director

July 30, 2012

(Date Mailed)

Enclosures(s)

cc:

FJC SECURITY SERVICES INC.
JFK Cargo Center Bldg 75, Room 228
Attn: Director of Human Resources
Jamaica, NY 11430

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SAMUEL TUCCIO X

Plaintiff,

-against-

FJC Security Services Inc.

Defendant.

STATEMENT OF FACTS
(ATTACHED TO COMPLAINT)

X

I.) DISCRIMINATION IN JOB ASSIGNMENTS

The Personnel department consisted of Hispanic employees. I had over 10 years of experience as a security guard, passed the fire guard exam with a score of 93, took an optional course so that I could drive a patrol car on the tarmac, got scores of 85 to 95 in my training class, was 66 years old, and a college graduate. In my employment application, I stated that I wanted a day shift. Yet I was given 3 outdoor assignments and 2 of them were on the graveyard shift:

- A.) Security officer at Terminal 4, 11 PM – 7 AM. [June 1, 2009 – August 8, 2009] Listed below are the jobs at Terminal 4:

Rover (driving a patrol car on the tarmac)

Bravo3 (inside)

Alpha3 (inside)

Romeo (inside)

Delta4 (inside)

Charlie1 (inside)

Charlie2 (inside)

Delta1 (outdoors on the second floor)

Charlie3 (outdoors)

Charlie4 (outdoors).

I was assigned to the last 3 positions which were OUTDOOR ASSIGNMENTS). After I complained to my supervisors that it was unfair for them to assign newly hired employees to the more desirable indoor assignments when I always got the least desirable outdoor assignments, in the middle of July, 2009, I finally got to work inside.

- B.) Security officer patrolling the outside of Building 20, 6 PM 2 AM. [August 10, 2009] Assignment was refused.
- C.) Security officer for Avianca Airlines in Terminal 4 in the bag room, 5 AM – 9 AM. [August 11, 2009 – January 20, 2010.

Although "bag room" was not stated on the form which I signed(Exhibit A in FJC's answer to my original complaint), I was told by Human Resources that it was the bag room. This meant that I watched the circular luggage handling belts on the first floor near the Airbus 330 airplane itself. The bag room had doors which were 40 feet wide and 50 feet high. The doors were open most of the time with a 30 to 40 mile per hour wind blowing outside the doors. When I complained to the supervisors in the area about the lack of heat in November, 2009, they told me that the heat would not be turned on until after Thanksgiving Day. The "heat" turned out to be 2 large space heaters hanging from the ceiling

I want to subpoena for a deposition other white employees who experienced a similar fate:

- 1.) Justin Avery. He was in my training class and got 100 on every test.
- 2.) Lowell Caraballo.
- 3.) The woman who worked on the tarmac in

December 2009 – January 2010 (mentioned in my original complaint to the EEOC).

- 4.) Jenny (last name unknown) who worked for two or three days in the bag room (one of the people who were there temporarily for one day).

With the court's permission, I want to subpoena the names of all the employees in my training class of May, 2009, the scores they received on every test, and the first 3 assignments each employee received.

II.) DISCRIMINATION BY THE SUPERVISOR, ALBERTO CABANILLA

When I worked in the bag room, there were 3 or 4 temporary employees there every day. They told me that they had better jobs at the airport but were there for one day only after they requested overtime. They told me that they would never settle for the lousy job which I had. They were nearly always black or Hispanic and scoffed at the idea of being assigned to work on the tarmac guarding the plane as they were too good for this job.

In December, 2009, it got severely cold and Alberto Cabanilla assigned me and a white woman to work on the tarmac. He took me out of my assignment in the bag room over my protestations and wanted me on the tarmac 2 or 3 days per week. Sometimes I refused to work there and he changed my assignment. Other times, he gave me a choice between working outside or going home. I always went home when given this choice. My complaint to the EEOC is about the specific dates that I was forced to work on the tarmac under extreme weather conditions.

I noticed that FJC's attorney neglected to name the WHITE woman who was forced against her will to work on the tarmac in extreme weather conditions while young, muscular Latino men and women hid inside where it was warm. I might add that young muscular black men and women hid inside where it was warm – even those who were there for one day only.

I noticed that FJC's attorney failed to name the tall black woman who worked at Avainaca as a security guard. For this reason, I want to subpoena the daily sign in sheets at the Avianca office for August 11, 2009 through January 20, 2010.

FJC's attorney refers to an Exhibit C. This was a statement which I signed when I applied for employment. I was never given a copy of this. Since FJC's application process involves filling out about 30 or more pages of forms, it is unreasonable for then to expect each new hire to remember the name and telephone number of the people to contact in case of employment discrimination.

I was never told any any time by anyone that seniority had anything to do with my assignments in Part I or Part II of this complaint until January 20, 2012 when the General Manager, James Donohue, brought it up.

Finally, I was terminated for standing up to employment discrimination and this should not be held against me.

Dated: October 26, 2012

Respectfully submitted,


Samuel J. Tuccio

199 West Nicholai Street
Hicksville, New York 11801
(516) 938 4652 (voice or fax)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Samuel Luccio

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

*199 West Nicholas St.
Hicksville NY 11801*

DEFENDANTS

FTC Security Svcs., Inc.

(b) County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

**BIANCO, J.
BROWN, M. J.**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|--|--|---|--|---|--|
| <input type="checkbox"/> 110 Insurance
<input type="checkbox"/> 120 Marine
<input type="checkbox"/> 130 Miller Act
<input type="checkbox"/> 140 Negotiable Instrument
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment
<input type="checkbox"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise
<input type="checkbox"/> 210 Land Condemnation
<input type="checkbox"/> 220 Foreclosure
<input type="checkbox"/> 230 Rent Lease & Ejectment
<input type="checkbox"/> 240 Torts to Land
<input type="checkbox"/> 245 Tort Product Liability
<input type="checkbox"/> 290 All Other Real Property | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury
<input checked="" type="checkbox"/> 441 Voting
<input checked="" type="checkbox"/> 442 Employment
<input checked="" type="checkbox"/> 443 Housing/Accommodations
<input type="checkbox"/> 444 Welfare
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment
<input type="checkbox"/> 446 Amer. w/Disabilities - Other
<input type="checkbox"/> 440 Other Civil Rights | PERSONAL INJURY
<input type="checkbox"/> 362 Personal Injury - Med. Malpractice
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability
<input type="checkbox"/> 510 Motions to Vacate Sentence
Habeas Corpus:
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture
<input type="checkbox"/> 620 Other Food & Drug
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 630 Liquor Laws
<input type="checkbox"/> 640 R.R. & Truck
<input type="checkbox"/> 650 Airline Regs.
<input type="checkbox"/> 660 Occupational Safety/Health
<input type="checkbox"/> 690 Other
<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee
<input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 950 Constitutionality of State Statutes |
|--|--|---|--|---|--|

V. ORIGIN

- (Place an "X" in One Box Only)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

*Title VII
employment discrimination*

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

JFB-GRB

DOCKET NUMBER

10-CV-1714

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, N/A, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☐ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks: N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
- b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐ Yes N/A ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☐ No

I certify the accuracy of all information provided above.

Signature: N/A

PRO SE CHECK SHEET

PRO SE NAME Samuel Tuccio

 RANDOM SELECTION*

 LONG ISLAND DRUM

 BROOKLYN DRUM **CV 12 5506**

DIRECT ASSIGN TO JFB-GRB

RELATED TO 10-1714

BIANCO, J.

BROWN, M. J.

*PLEASE DO NOT ASSIGN TO A SENIOR JUDGE.

PLEASE PROVIDE A COPY OF THE DOCKET TO CATHY AFTER
THE CASE IS OPENED.

THANK YOU.

Declaration of Scott A. Weiss
EXHIBIT: 2

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

SAMUEL TUCCIO,

Plaintiff,

v.

FJC SECURITY SERVICES INC.,

Defendant.

Case No. 2:12 cv-12-05506-JFB-GRB

***Answer and Affirmative Defenses
Submitted By
Defendant FJC Security Services Inc.***

Defendant, FJC Security Services Inc., by its attorneys, as and for its Answer and Affirmative Defenses to Plaintiff's Complaint ("***Complaint***") in this action, alleges as follows:

1. Because the first paragraph of the Complaint alleges legal conclusions, no response is required, but Defendant denies liability.
2. As to the first paragraph on page 2 of 12 of the Complaint, Defendant admits that the court has federal subject matter jurisdiction and venue is proper, except to deny sufficient knowledge or information as to whether the Court has in personam jurisdiction over Defendant.
3. Defendant denies the allegations contained in Paragraph 1 of the Complaint, but states that Defendant is informed and believes that Plaintiff resides at 199 West Nicholai Street, Hicksville, New York 11801.
4. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

5. Defendant denies sufficient knowledge or information to admit or deny the allegations alleged in Paragraph 3 of the Complaint, except to admit that Plaintiff was hired as a security guard on or about May 5, 2009, and his employment was terminated on or after January 20, 2010, when he refused an assignment in violation of Defendant's rules and regulations.
6. Defendant denies the allegations contained in Paragraph 4 of the Complaint.
7. Defendant denies the allegations contained in Paragraph 5 of the Complaint, except to admit that Plaintiff was terminated on or after January 20, 2010, when he refused an assignment in violation of Defendant's rules and regulations.
8. Defendant admits the allegations contained in Paragraph 6 of the Complaint and states further that at all times material hereto, it has been in full compliance of federal and state laws.
9. Defendant denies the allegations in Paragraph 7 of the Complaint.
10. Defendant denies sufficient knowledge or information to admit or deny the allegations contained in Paragraph 8 of the Complaint.
11. Defendant denies sufficient knowledge or information to admit or deny the allegations contained in Paragraph 9 of the Complaint.
12. Defendant denies sufficient knowledge or information to admit or deny the allegations contained in Paragraph 10 of the Complaint.
13. Defendant offers no response to Paragraph 11 of the Complaint as Plaintiff does not allege age discrimination in this matter.
14. Defendant denies sufficient knowledge or information sufficient to admit or deny the allegations contained in Paragraph 12 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16. The allegations upon which Plaintiff relies and the alleged conduct is caused by Plaintiff's culpable conduct, namely Plaintiff was terminated because he refused an assignment in violation of Defendant's rules and regulations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. Plaintiff may have failed to mitigate damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18. There exists a collective bargaining agreement between Defendant and the Allied International Union pursuant to which Plaintiff is required to submit a grievance and if not resolved, demand arbitration through his certified bargaining representative, the Union, and therefore this claim should be arbitrated, if at all.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

19. The Court may not have in personam jurisdiction over the Defendant because of insufficiency of service.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

20. Defendant at all times material hereto has been in full and complete compliance with federal and state laws.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

21. All or any part of Plaintiff's claim may be barred by the doctrine of waiver and/or estoppel.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

22. Plaintiff's alleged claim may be barred because he failed to exhaust his administrative remedies, namely those remedies that may be available under a collective bargaining agreement.

WHEREFORE, Defendant FJC Security Services, Inc. prays that this Court enter an Order dismissing the Complaint with prejudice, awarding its reasonable attorneys' fees and disbursement of costs for defending this meritless claim, and such other and further relief as this Court deems appropriate.

DATED: Monday, December 31, 2012

Respectfully Submitted,

Of Counsel to:
INGBER LAW FIRM, PLLC
Clifford J. Ingber, Esq. (CJI 7160)
6 Stallion Trail
Greenwich, Connecticut 06830
(203) 629-6129/ Fax: (203) 629-3950
Cji@ingberlawfirm.com
FJC Security Services Inc.
-its Attorneys-

WEISS & WEISS LLC, Of Counsel

By: /s/ Scott A. Weiss
Counsel of Record for:
FJC Security Services Inc., Defendant
2000 Post Rd., LL 106
Fairfield, CT 06824
50 Main Street, 10th Floor
White Plains, New York 10606
(866) 277-2707/Fax: (203) 254-2725
Scott@weissnweiss.com
(SW0431)

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

SAMUEL TUCCIO,)
)
Plaintiff,)
)
v.) Case No. 2:12 cv-12-05506-JFB-GRB
)
FJC SECURITY SERVICES INC.,)
)
Defendant.)

Certificate of Service

I, Scott A. Weiss, an attorney, certifies and affirms, under penalty of perjury, 28 U.S.C. §1746 (2012) that I caused to have this within *Answer and Affirmative Defenses Submitted by FJC Security Services Inc.* to be served on the following by first class mail, postage prepaid on Thursday, January 03, 2013:

Plaintiff: Samuel Tuccio
199 West Nicholai Street
Hicksville, New York 11801

DATED: Thursday, January 03, 2013

Respectfully Submitted,

Of Counsel to:
INGBER LAW FIRM, PLLC
Clifford J. Ingber, Esq. (CJI 7160)
6 Stallion Trail
Greenwich, Connecticut 06830
(203) 629-6129/ Fax: (203) 629-3950
Cji@ingberlawfirm.com
FJC Security Services Inc.
-its Attorneys-

WEISS & WEISS LLC, Of Counsel

By: /s/ Scott A. Weiss
Counsel of Record for:
FJC Security Services Inc., Defendant
2000 Post Rd., LL 106
Fairfield, CT 06824
50 Main Street, 10th Floor
White Plains, New York 10606
(866) 277-2707/Fax: (203) 254-2725
Scott@weissnweiss.com
(SW0431)

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X

SAMUEL TUCCIO,

Plaintiff,
Case Number:
2:12 CV-12-05506-JFB-GRB

-against-

FJC SECURITY SERVICES, INC.,

Defendant.

-----X

225 Cadman Plaza
Brooklyn, New York

August 22, 2013
12:55 p.m.

EXAMINATION BEFORE TRIAL of FJC
SECURITY SERVICES, INC., the Defendant
herein, by JAMES JOSEPH DONOHUE, taken by
adverse parties, pursuant to Notice, held
at the above-noted time and place, before
Kimberly R. Jones, a Notary Public of
the State of New York.

1 JAMES JOSEPH DONOHUE

2 period of nine months.

3 Q. When did you begin working for FJC
4 Security Services, Incorporated?

5 A. I began in 1999 on a part-time basis
6 and became a full-time employee in 2001.

7 Q. What was your position and location?

8 MR. WEISS: Objection as to form.

9 You may answer.

10 Q. What was your position and location?

11 MR. WEISS: Are you saying his
12 initial position?

13 MR. TUCCIO: Yes.

14 A. My initial position when I began in
15 1999 was as a security officer, as a traffic
16 enforcement agent at Terminal 4 JFK.

17 Q. And what was your next position after
18 that?

19 A. In 2001, I was promoted to field
20 supervisor.

21 Q. What was your next position?

22 A. In 2002, I was promoted to project
23 manager.

24 Q. What was your next position after
25 that?

1 JAMES JOSEPH DONOHUE

2 A. In 2004, I was promoted to general
3 manager.

4 Q. Is that general manager at the
5 airport?

6 A. General manager of aviation.

7 Q. Is that your present position?

8 A. No.

9 Q. What is the next job after 2004?

10 A. In 2011, I was promoted to general
11 manager and senior director of aviation.

12 Q. What was your next position after
13 that?

14 A. In 2012, I was promoted to executive
15 director of aviation services.

16 Q. Is that your present position?

17 A. Yes.

18 Q. Have any complaints been brought
19 against you at FJC Security Services?

20 A. Yes.

21 Q. Have any lawsuits been lodged against
22 you at FJC Security Services?

23 MR. WEISS: I'll let him answer but
24 just out of curiosity, what's the relevance
25 of any other lawsuits other than burdening

1 JAMES JOSEPH DONOHUE

2 A. At that point, I had over 100 college
3 credits in the area of management. I underwent 40
4 hours of classroom training in the field aviation
5 security. I underwent Port Authority SIDA
6 training, Port Authority AOA driver training, New
7 York State eight hour certificate for security
8 officer, New York State 16 hour training as a
9 security officer, F93 training for FDNY fireguard,
10 in addition to 2001. At that time --

11 Q. Just training as supervisor or
12 manager, not as security guard.

13 Do you have a college or university
14 degree?

15 A. Yes, I do.

16 Q. What is that?

17 A. I have a Bachelor's degree in
18 business management from the College of
19 St. Francis in Brooklyn, New York.

20 Q. Who appointed you or hired you to
21 your present position?

22 A. Who promoted me, is that the
23 question?

24 Q. Yes, who made you executive director?

25 A. Former vice president Robert

1 JAMES JOSEPH DONOHUE

2 Q. Next question. How does the human
3 resources department test new employees?

4 A. All new employees go through an
5 initial training period, which I believe that
6 there may be a test at the end of that. I would
7 have to check with my training department, as well
8 as all new potential employees must undergo Port
9 Authority SIDA training, which a test is given at
10 the end of that. I'm also pretty sure that all
11 employees must obtain a New York State security
12 guard license and prior to getting that, they must
13 go through an eight hour training course, which I
14 believe there is a test at the end of that. Same
15 for the New York State 16 hour training course for
16 security officers. Again, I'm going off the best
17 of my recollection and would have to fact check
18 that.

19 MR. TUCCIO: Maybe this will help.

20 I'm going to make this Exhibit Number 1. I
21 just made one full copy of it, which you're
22 going to get, but it's just for him to this
23 is the same thing I mailed you. This is
24 just a cover sheet. But in this training,
25 I put down the exhibit, the certificates

1 JAMES JOSEPH DONOHUE

2 Santiago.

3 A. To answer your question, again, it
4 appears to be certificates of completion and parts
5 and pieces of certain training materials that
6 appear to be part of FJC's -- several different
7 FJC training curriculum.

8 Q. The last thing you looked at was the
9 cargo screening, the first page of two booklets
10 that I received.

11 A. The last two pages referencing cargo
12 security screener with the Delta Airlines logo, as
13 well as the last page being a photo of an
14 electronic trace detection machine, that training
15 is not conducted by FJC. That training was
16 conducted by one of our clients at the time, that
17 being Delta Airlines.

18 Q. How does the human resources
19 department determine which assignments to give to
20 new employees?

21 A. All work assignments are drafted up
22 by myself without names on them. At that point,
23 those blank work assignments are handed to the
24 personnel department who, in turn, then distribute
25 them to new hired employees based on first come,

1 JAMES JOSEPH DONOHUE

2 first served after a turnaround time of the
3 vetting of their credentials to make them eligible
4 to work for FJC at an airport.

5 Q. Next question. Is there any relation
6 between the test scores and the training class
7 given by the instructor Efrain Santiago and the
8 first assignment given to a new employee?

9 A. No.

10 Q. Is there any relation to the test
11 score of the fire exam and the first assignment
12 given to a new employee?

13 A. No.

14 Q. Is there any relation to the test
15 score of the exam given at the end of a course
16 taught by John Harding of Delta Airlines on the
17 cargo security screener using an explosives trace
18 detector and the first assignment given to a new
19 employee?

20 A. No.

21 Q. Is there any relation to the test
22 score of a four hour course given by the Port
23 Authority of New York and New Jersey and the first
24 assignment given to a new hire?

25 A. Please be more specific. The Port

1 JAMES JOSEPH DONOHUE

2 Authority conducts several classes.

3 Q. Is there any relation to the
4 scores -- there's a score given on one of the
5 certificates that I showed you.

6 A. Which certificate would that be?

7 Q. In Exhibit A, I believe the first
8 certificate has a score of 96 at the bottom.

9 A. You're referencing the Port Authority
10 of New York and New Jersey Certificate of
11 Attendance for SIDA certification?

12 Q. Correct.

13 A. So, no, there is no correlation to
14 the score on the test in regards to employees'
15 work assignments. But for the record, be known,
16 when it says there is no correlation to score, if
17 you fail any of the required courses, then you are
18 not eligible to work. So that would be the only
19 correlation.

20 Q. So if you fail any of the tests, then
21 you are not qualified to work?

22 A. Only if you fail a SIDA course or if
23 you fail FJC's initial training course. If
24 someone were to fail the fireguard exam, that
25 would not disqualify them from working, it would

1 JAMES JOSEPH DONOHUE

2 just limit them to where they can work. Same for
3 Port Authority AOA driver training. If someone
4 fails the course, they are not eligible to drive
5 but that does not disqualify them from holding a
6 non-driving position and et cetera.

7 Q. Is there any relation to the number
8 of years of experience that a security guard has
9 and the first assignment given to him as a new
10 employee?

11 A. No.

12 Q. Does the previous employment record
13 of an employee have any relation to the assignment
14 given to the new employee; for example, suppose
15 that employee was a former police officer?

16 A. Depending on the position they're
17 applying for. Of course their past experience and
18 their credentials would determine what they're
19 eligible to work. For example, if I need an armed
20 security guard, someone who has law enforcement
21 background and is eligible to carry a firearm, of
22 course that would determine where they're eligible
23 and can work. But for the average airport
24 security officer, which is the entry level
25 position, that the majority of employees are hired

1 JAMES JOSEPH DONOHUE

2 for, the answer is no.

3 Q. Is there any relation between
4 employee's educational record and the first
5 assignment given to a new employee?

6 A. For which position?

7 Q. Security guard.

8 A. No.

9 Q. So, I think maybe you answered this
10 one. Who makes the decision on which assignment
11 to give a new employee?

12 MR. WEISS: Objection. Asked and
13 answered.

14 You may answer it.

15 A. The schedules for new employees are
16 drafted up by myself without names or designation
17 to it. From that point, it is issued to the
18 personnel department, who then issues it to the
19 new hires on a first come, first served basis,
20 based on the turnaround time of their background
21 investigation and achieving their credentials to
22 work in the airport for FJC.

23 Q. Are you in charge of hiring
24 instructors or members of the human resources
25 department?

1 JAMES JOSEPH DONOHUE

2 A. Yes. Currently, yes.

3 Q. In 2009, were you in charge?

4 A. All final decisions on employment for
5 non guard personnel was verified and approved by
6 the vice president at that time, John Pagnotta.

7 Q. He verified and approved them but
8 were you in charge of hiring instructors or
9 members?

10 A. Based on the fact that it had to be
11 approved and authorized by the vice president, he
12 makes the final decisions. Again, when I
13 reference he, referring to the vice president
14 in 2009 who was John Pagnotta.

15 Q. In 2009 to 2010, what was your
16 relationship to the people who worked in the
17 office at Suite 225 in Building 75 at the airport?

18 MR. WEISS: Objection as to form.

19 But if you understand the question,
20 you may answer it.

21 A. Under the direction of vice president
22 John Pagnotta, I had responsibility as the
23 immediate supervisor of all personnel in said
24 office.

25 Q. Was it strictly professional?

1 JAMES JOSEPH DONOHUE

2 MR. WEISS: Objection. What does
3 that got to do with anything? How is that
4 relevant? Again, the scope of discovery,
5 while liberally construed, is based on what
6 is material and relevant under Rule 26.
7 What does his relationship, other than
8 professional in the office, got to do with
9 anything? If you can tell me how that's
10 relevant, then I'll let him answer the
11 question. I'm prepared to discuss it with
12 you informally off the record so we do not
13 burden the record.

14 MR. TUCCIO: Let me go on to the next
15 question.

16 Q. Did you go out together or socialize
17 at lunchtime with the employees in the office?

18 MR. WEISS: That's not material or
19 relevant, either.

20 But you may answer it.

21 A. I'm sure that sometime in my career,
22 yes, I did have lunch with my colleagues.

23 Q. This is a copy of the letter you sent
24 me.

25 (Whereupon, the aforementioned

1 JAMES JOSEPH DONOHUE

2 Two-Page Document was marked as Plaintiff's
3 Exhibit 2 for identification as of this
4 date by the Reporter.)

5 Q. This is the letter of termination
6 which I received --

7 MR. WEISS: One moment.

8 A. Can I have time to review, please?

9 MR. WEISS: The only question I have
10 of you, Mr. Tuccio, is did you sign this
11 document?

12 MR. TUCCIO: That's not my signature,
13 that's his signature.

14 MR. WEISS: But it says Samuel Tuccio
15 on the right. Did you sign this at any
16 time?

17 MR. TUCCIO: No.

18 MR. WEISS: I want to make sure it's
19 complete, that's all.

20 Okay, are you ready to go?

21 THE WITNESS: Yes.

22 MR. WEISS: Go ahead.

23 Q. Do you recall speaking to me at
24 one p.m. on January 20, 2010?

25 A. Based on Exhibit 2 presented before

1 JAMES JOSEPH DONOHUE

2 me, it indicates with my signature, yes, we did
3 meet and have a discussion.

4 Q. What did you say to me?

5 A. I don't recall the substance of the
6 conversation.

7 Q. Do you remember telling me that the
8 incident at five a.m. that morning caused the
9 alarms to go off, as stated in that letter?

10 MR. WEISS: Objection as to form.

11 Which incident?

12 MR. TUCCIO: The incident that's
13 mentioned in that letter of me going
14 through --

15 MR. WEISS: Go ahead.

16 MR. TUCCIO: -- the door of Avianca
17 Airlines.

18 A. Based on the letter with my signature
19 on it dated January 20, 2010, it indicates we did
20 have a discussion about an incident that occurred
21 on same date as letter at, approximately, I
22 believe it mentions between the hours of four a.m.
23 and eight a.m.

24 Q. Yes, okay. January 20th, that was
25 daylight savings time, so that was about, I

1 JAMES JOSEPH DONOHUE

2 believe, five a.m. Daylight savings time.

3 Which alarms went off? You mentioned
4 several alarms; which alarms?

5 A. To the best of my recollection, based
6 on the information provided in Exhibit 2, I
7 believe it was a restricted access door leading
8 from inside of Terminal 4 onto the aeronautical
9 area, acronym, AOA.

10 Q. So, you're saying that one door alarm
11 went off?

12 A. I don't know how many. It doesn't
13 reference the amount of alarms in the letter.

14 Q. It does say alarms went off.

15 To my knowledge, that was an isolated
16 area of the airport on the second floor of the
17 cargo building at Terminal 4. Everything was
18 closed at that time of night. It was just that
19 one alarm?

20 MR. WEISS: Mr. Tuccio, I understand
21 you have a position but it's inappropriate
22 for you to be testifying on the record.
23 You had your opportunity last Thursday. If
24 you have a question of this witness, please
25 ask it.

1 JAMES JOSEPH DONOHUE

2 Q. Your answer is that just one alarm
3 went off, or many?

4 MR. WEISS: That's not the testimony.
5 Go ahead, you can answer it again.

6 A. I do not recall the amount of alarms.
7 But for the record, when an alarm is issued,
8 multiple lights and sirens do go off, so the
9 reference of plural in alarms may be pertaining to
10 that. That's to the best of my recollection and
11 what was presented in the document before me in
12 Exhibit 2.

13 Q. Did you tell me that the entire
14 building, that is all of Terminal 4, was
15 evacuated?

16 A. Not that I recall.

17 Q. Did you ever say that to any other
18 employee who you terminated?

19 MR. WEISS: Objection. Again, we're
20 bouncing up against relevance but if you
21 know, you may answer.

22 A. Not that I recall.

23 Q. Did you tell me that all flights were
24 either cancelled or postponed at Terminal 4?

25 A. Not that I recall.

1 JAMES JOSEPH DONOHUE

2 MR. WEISS: Off the record.

3 (Discussion held off the record.)

4 Q. Did you ever say that to any other
5 employee who you terminated, that all flights were
6 either cancelled or postponed at Terminal 4?

7 A. Not that I recall.

8 Q. I just want to let you know, again,
9 you are under oath. So if I find out that you
10 have committed perjury, I will bring this to the
11 attention of the U.S. attorney.

12 A. I'm aware of my legal obligation.

13 MR. WEISS: The witness has been
14 sworn. I ask you to refrain from veiled
15 threats because that's inappropriate on the
16 record. So please continue.

17 MR. TUCCIO: I don't think that's
18 inappropriate at all.

19 MR. WEISS: Please continue.

20 MR. TUCCIO: I don't think that's
21 inappropriate at all.

22 Q. Did you tell me that the Port
23 Authority of New York and New Jersey policemen
24 would issue a warrant for my arrest?

25 A. Not that I recall.

1 JAMES JOSEPH DONOHUE

2 Q. Not that I recall; is that a no?

3 A. It means I do not remember the
4 substance of the conversation that we allegedly
5 had as outlined in Exhibit 2 before me.

6 Q. Now, following that answer to the
7 last question, did you ever say that to any other
8 employee who you terminated?

9 MR. WEISS: Say what?

10 Q. That the Port Authority of New York
11 and New Jersey would issue a warrant for their
12 arrest.

13 A. Not that I recall.

14 Q. On or about February 9, 2010, the
15 union rep, Al Dooley, telephoned me --

16 MR. WEISS: Mr. Tuccio, you're not
17 permitted to testify. You had your chance.
18 Is there a question?

19 MR. TUCCIO: Yes, there is a
20 question.

21 MR. WEISS: I'm trying to be patient
22 with you on these points but you have to
23 ask a question.

24 MR. TUCCIO: Yes, there will be a
25 question. That's what I'm getting to. I'm

1 JAMES JOSEPH DONOHUE

2 Now, at Terminal 4, all the guards go
3 to one room in the beginning of the shift, all the
4 FJC security guards. So, that contract is between
5 FJC and who?

6 MR. WEISS: There's a question
7 pending. I may let you answer that. Let
8 me talk to you for a minute.

9 Off the record for a second.

10 (Discussion held off the record.)
11 Read back the last question.

12 MR. WEISS: Read back the last
13 question.

14 (The requested portion of the record
15 was read back by the reporter.)

16 MR. WEISS: You may answer.

17 A. The majority is between FJC Security
18 Services and JFK IAT LLC.

19 Q. And is there a space between the T
20 and the LLC; it's IAT space LLC?

21 A. LLC means limited liability company.

22 MR. WEISS: I'm assuming IAT and New
23 York law requires that they use the LLC to
24 signal they were a limited liability
25 company.

1 JAMES JOSEPH DONOHUE

2 Q. The IAT, that stands for?

3 A. International Arrivals Terminal.

4 Q. Let me go back one minute. On the
5 assignment of jobs, you claim that you were the
6 one who was in charge of assigning security guards
7 to their first assignment. After the security
8 guard works at the first assignment, let's say, in
9 my case, at Terminal 4, we're taken off of that
10 and put on another assignment. Who assigns
11 security guards to the second assignment?

12 A. I do.

13 Q. And how about the third assignment?

14 A. I do.

15 Q. Now, returning to the security guards
16 log books. Where are the supervised security log
17 books secured?

18 A. For which account?

19 Q. I'm talking about the ones for JFK
20 IAT LLC.

21 A. Depending on how old and from what
22 year, they can either be in our office on site.
23 They could be in a storage closet within the
24 terminal. They could be in a storage closet at my
25 office at Building 75. They could be in a storage

1 JAMES JOSEPH DONOHUE

2 stored?

3 A. No.

4 Q. What happens to the test scores from
5 the exam from the cargo security screening given
6 by Delta Airlines?

7 MR. WEISS: That is, also, objection
8 as to form.

9 You may answer.

10 A. I believe that's proprietary to
11 Delta. I'm not sure.

12 Q. As I recall, they were graded by
13 Efrain Santiago in May 2009.

14 A. Just because he grades them doesn't
15 mean he's responsible for what's done with them
16 afterwards.

17 MR. WEISS: There was no question but
18 go ahead.

19 Q. So you do not know?

20 A. I believe they are proprietary
21 property of Delta Airlines but I am not sure.

22 Q. What happens to the test scores from
23 the driving class for the designation on your
24 badge of DR 1 or EV given by Efrain Santiago?

25 MR. WEISS: That's the same objection

1 JAMES JOSEPH DONOHUE

2 the four day training period of Efrain Santiago's
3 basic security guard training, do you pay the
4 employees for that period?

5 A. That would fall under New York State
6 required training for a security officer. And as
7 far as I'm aware, the employer is not required to
8 pay for that because it is a state licensing class
9 in which the employee can transfer to their
10 employment anyplace else.

11 Q. So, you are saying that that is not a
12 violation of the federal labor law and it's not a
13 violation of the state labor law?

14 A. I'm not familiar with the labor laws.
15 I am not a lawyer, I am not familiar to the word
16 of the labor laws.

17 Q. I was not paid for the training that
18 I underwent for the driving of a vehicle on the
19 tarmac that was given for one day by Efrain
20 Santiago. Do you generally pay people for that
21 period?

22 A. No, because that is a transferrable
23 certification that an employee can utilize and
24 take with them with future employment with other
25 companies.

1 JAMES JOSEPH DONOHUE

2 Q. The training by the Port Authority of
3 New York and New Jersey, four hours of training
4 which results in a certificate that was given to
5 me, in Part A of Exhibit Number 1. Do you
6 generally pay employees for that?

7 A. No, it is a transferrable
8 certification to benefit the employee that can be
9 transferred to other employment within another
10 corporation or company.

11 Q. You know, you can say that about any
12 training in a way.

13 MR. WEISS: That's not a question.
14 That's an argument.

15 MR. TUCCIO: That's an argument,
16 well, we'll see.

17 MR. WEISS: Please proceed.

18 Q. You answered the question.

19 MR. WEISS: What question?

20 Q. You answered the question.

21 MR. WEISS: Okay.

22 Q. The training that I got, the cargo
23 screening training given by Delta instructor John
24 Harding, I was not paid for that. Should I have
25 been paid for that?

1 JAMES JOSEPH DONOHUE

2 A. I would have to check records, I do
3 not know.

4 Q. I had to go to Brooklyn to the
5 Metrotech Center and get an F93 fireguard license,
6 and that was a few hours. I did that at the
7 request of your personnel department. Should I
8 have been paid for my time?

9 A. It's a transferrable certification
10 but we do reimburse our employees the \$25 fee for
11 the testing, which is not a requirement, it is a
12 generosity, a perk, I don't know the proper word
13 to use, that we give back to our employees for
14 getting that certification.

15 Q. In that exhibit, doesn't it say it's
16 only good at FJC? I don't see that it's
17 transferrable to another employee at all. On the
18 badge.

19 A. What is the question?

20 Q. The badge specifies FJC, it's for
21 FJC.

22 MR. WEISS: Which tab?

23 Q. Which would suggest it's not
24 transferrable to any other company.

25 MR. WEISS: Well, the document --

1 JAMES JOSEPH DONOHUE

2 A. What is the question?

3 Q. I believe the badge says that it's
4 for FJC's use. Our request, it's not
5 transferrable to another employer.

6 A. What is the question?

7 Q. Is this badge transferrable to
8 another employer?

9 A. Yes. With your new employer, you
10 would take a letter from that employer, bring it
11 to the Metrotech Center and they would change the
12 name over, without charging you or retesting you
13 as long as the license was still valid.

14 Q. Supervisor Alberto Cabanilla took me
15 off my assignment in the bag room on December 3,
16 2009 and ordered me to work on the tarmac for
17 three and a half hours during heavy rain, cold
18 weather and about a 25 mile hour wind. Why didn't
19 FJC Security Services provide me with a vehicle
20 such as a Ford Escape or a Jeep Liberty for this
21 job? U.S. Security Associates, for example, does
22 that for its guards.

23 MR. WEISS: What's the question? Can
24 you read back the question? I'm not even
25 sure what the question is.

1 JAMES JOSEPH DONOHUE

2 (The requested portion of the record
3 was read back by the reporter.)

4 MR. WEISS: If you can answer the
5 question.

6 A. I can't speak on behalf of why U.S.
7 Security Associates does what they do, as I'm not
8 an employee of them. And in your particular
9 situation, the post did not require a vehicle.

10 Q. Do you believe that it is reasonable
11 for the management of FJC Security Services to put
12 the health and personal safety of a security guard
13 at risk by assigning Gloria Noel, a white female,
14 or myself, an old white man, to stand on the
15 tarmac completely exposed to the elements at
16 five a.m. during heavy rain, extreme cold and a
17 35 to 40 mile hour wind for up to four hours
18 repeatedly? The question, again --

19 MR. WEISS: Listen. I object to the
20 improper hypotheticals. You're assuming
21 all sorts of facts in evidence to see if
22 you can pin down this witness on your
23 version of the arguments.

24 You can answer that question, you're
25 free to do so, but I object to that

1 JAMES JOSEPH DONOHUE

2 MR. TUCCIO: Yes.

3 MR. WEISS: Have you completed your
4 question?

5 Q. The thing is, did you claim in your
6 termination letter to me and your discussion with
7 me at one p.m. on January 20, 2010, that the
8 assignments were based on seniority?

9 MR. WEISS: I'm going to object to
10 the argument that was the large majority of
11 that question. It assumes facts not in
12 evidence, the document is the document, it
13 speaks for itself. And it also assumes
14 certain other facts that you're so
15 indicating is argument.

16 But if you can answer that question,
17 you may.

18 A. I don't recall the conversation that
19 you and I had on January 20th of 2010, so I cannot
20 answer that question. However, if the document
21 indicates that that was stated and that document
22 has my signature on it, then I will accept that as
23 fact.

24 Q. Did Alberto Cabanilla look up the
25 date of hire of every employee, both permanent and

1 JAMES JOSEPH DONOHUE

2 rephrase it, please.

3 Q. How would Mr. Cabanilla be able to
4 judge the seniority of these people who were there
5 temporarily for one or two days, whether they
6 were --

7 A. Mr. Cabanilla did not make those
8 assignments. Someone volunteered for overtime,
9 those assignments are made through my dispatching
10 office. Granted, that if facts can prove any of
11 the persons being referenced on specific days were
12 actually on overtime or not.

13 MR. WEISS: Off the record.

14 (Discussion held off the record.)

15 Q. So that was the reason why I asked
16 about how Mr. Cabanilla would know the start date
17 of --

18 MR. WEISS: Go on to your next
19 question.

20 Q. The answer there was kind of
21 unsatisfactory because it says the bag room but I
22 would be taken out of the bag room and told to
23 work -- see, that's changing my assignment.

24 Would Mr. Cabanilla know what the
25 regular jobs of these temporary people were; is

1 JAMES JOSEPH DONOHUE

2 time. The assignments there at Avianca Airlines
3 on that morning shift, were they given out on the
4 basis of seniority by your security guard company?

5 MR. WEISS: You're referencing the
6 exhibit, Exhibit 4?

7 Q. The assignments, yeah, at Avianca
8 Airlines, in the mornings from five a.m. to
9 nine a.m., were those assignments assigned on the
10 basis of seniority; was I assigned to the bag room
11 based on seniority?

12 A. As far as I'm aware and as stipulated
13 in Exhibit 2, yes.

14 MR. WEISS: You had two questions in
15 there. Which question do you want him to
16 answer?

17 Q. Answer that one.

18 MR. WEISS: Which one? I think you
19 answered the first one. I think that's the
20 next question.

21 Q. The question being, was Mr. Tuccio
22 assigned to the bag room based upon seniority.

23 (The requested portion of the record
24 was read back by the reporter.)

25 A. As far as I'm aware and as stipulated

1 JAMES JOSEPH DONOHUE

2 in Exhibit 2, yes.

3 Q. Okay, I have never heard of
4 assignments given on the basis of seniority in any
5 security guard company. Is this done extensively
6 at FJC or was this just a one time thing, on the
7 morning shift at Avianca Airlines?

8 A. What's the question?

9 MR. WEISS: Hold on. Move to strike
10 the argument.

11 But if you know the answer.

12 A. I don't know what the question is.

13 MR. TUCCIO: Read the question.

14 (The requested portion of the record
15 was read back by the reporter.)

16 A. As far as I'm aware, FJC does not do
17 things as a one time thing; we follow policies,
18 protocols and procedures. So as far as I'm aware
19 and based on -- depending on union CBA's and other
20 documents, as far as I'm aware, yes, most
21 assignments and requests are based on seniority in
22 most cases.

23 Q. Did any other employee charge Alberto
24 Cabanilla with racial or ethnic discrimination?

25 MR. WEISS: To your knowledge.

1 JAMES JOSEPH DONOHUE

2 A. To my knowledge, no.

3 Q. Was Alberto Cabanilla terminated?

4 MR. WEISS: You can answer that.

5 A. He has separated employment from FJC.

6 Q. Did he separate voluntarily?

7 A. Yes.

8 Q. I'm going to ask you a question about
9 John Abraham, who worked as a supervisor on the
10 eleven p.m. to seven a.m. shift at Terminal 4
11 during the summer of 2009. Summer, I mean June
12 and July. Was John Abraham terminated?

13 A. I don't know who John Abraham is.

14 Q. Mr. Donohue, have you sought
15 treatment for mental illness from a priest,
16 minister, rabbi, social worker, mental health
17 professional, psychologist or psychiatrist?

18 MR. WEISS: I don't think that's an
19 appropriate question.

20 MR. TUCCIO: You asked me that.

21 MR. WEISS: That's because I was
22 trying to determine whether you were
23 seeking compensatory damages, which we're
24 entitled to ask that question. You are not
25 entitled to ask it of the defendant.

1 JAMES JOSEPH DONOHUE

2 That's way beyond the scope of discovery.
3 I'll get on the phone with the Court about
4 that. I am not going to ask him to give
5 his HIPAA related medical condition -- and,
6 by the way, that's why I asked for a HIPAA
7 release, and, by the way, there's a
8 confidentiality stipulation. His mental
9 condition is not at issue, yours is.
10 Which, by the way, you have not -- never
11 mind. You're not claiming that, so I'm not
12 pursuing it, as disclosed in your response.
13 This is not, excuse me, because I do it,
14 you can do it. That's not how it works,
15 and vice versa, because you do it, I can do
16 it.

17 Q. Has any employee threatened to bring
18 a lawsuit against FJC Security Services?

19 A. Based on the size of our organization
20 and the length that we've been established, I
21 would assume, yes, I'm sure there has been legal
22 cases involving FJC.

23 Q. Do you know of any?

24 A. Not to my recollection at this time.

25 MR. WEISS: Other than this one.

1 JAMES JOSEPH DONOHUE

2 Q. The question is, has any other
3 employee besides myself brought a lawsuit against
4 FJC Security Services?

5 MR. WEISS: Objection as to form.

6 But you can answer.

7 A. Based on, I believe, the evidence
8 brought before me --

9 MR. WEISS: This is not evidence.

10 A. Based on the exhibit brought before
11 me, which references a newspaper article that
12 states that a former FJC employee is pursuing or
13 was pursuing a lawsuit against the company, so,
14 yes, I am aware of it now.

15 MR. TUCCIO: I have no further
16 questions.

17 MR. WEISS: Let me take a break. I
18 may have some questions.

19 (At this time, a brief recess was
20 taken.)

21 MR. WEISS: I have some redirect.

22 EXAMINATION BY

23 MR. WEISS:

24 Q. Mr. Donohue, Mr. Tuccio asked you a
25 question about Exhibit 2, which is that letter

1 JAMES JOSEPH DONOHUE

2 that's dated January 20, 2010; do you recall that?

3 A. Yes.

4 Q. I'm going to put that in front of you
5 and then ask you a couple of questions to clarify
6 it. Is that a document that you prepared
7 yourself?

8 A. Yes.

9 Q. Was it prepared about the time or
10 contemporaneously about the time you had the
11 conversation with Mr. Tuccio?

12 A. Yes, within no more than two hours.

13 Q. Is that your signature at the bottom?

14 A. Yes.

15 Q. Did you type that yourself or did you
16 handwrite it and give it to someone else to type
17 it?

18 A. No, I typed it myself.

19 Q. When you were done with it, did you
20 review it?

21 A. Yes.

22 Q. Now that you've seen the letter, has
23 that jogged your memory in any way as to what
24 transpired at that time? It references a meeting
25 with you and Mr. Tuccio.

1 JAMES JOSEPH DONOHUE

2 A. Yes, the situation.

3 Q. Can you tell me what he said and what
4 you said in the situation, to the best of your
5 recollection?

6 A. I can't remember verbatim the
7 discussions that was had.

8 Q. Sum and substance.

9 A. I do recall speaking with Mr. Tuccio,
10 advising him of what we felt were his violations,
11 advising him of the severity of the violations. I
12 do recall, vaguely, when he alleged unfair
13 practices, that we cease speaking about the
14 operational incident that occurred and I addressed
15 those immediately pertaining to where he stated
16 that he felt that he was being treated unfairly by
17 his supervisor. At that point, I advised him of
18 the facts that were, such as the ones written
19 here, pertaining to who he worked with, his
20 colleagues and how the assignments were made and
21 the reasoning behind the assignments. I believe I
22 also asked him if he wanted to pursue that further
23 at that point, and I believe he said no. And then
24 we referred back to the situation at hand, which
25 led to his termination of employment.

1 JAMES JOSEPH DONOHUE

2 Q. When you say "pursue further," what
3 do you mean by that?

4 A. I asked him if he wanted to pursue
5 his -- after I provided him with the response and
6 the reasoning behind the assignments, if he still
7 wanted to pursue further, that he felt that he was
8 being discriminated against. If he would have
9 chosen yes, that he would have, at that point, I
10 have an obligation to report that to my corporate
11 human resources department, our corporate risk
12 management office and they would have conducted a
13 thorough investigation. That was not done based
14 on the fact that Mr. Tuccio did not want to pursue
15 it further. And, at that time, he appeared to be
16 satisfied with the response I gave him as
17 pertaining to post assignment.

18 Q. You referenced post assignment. What
19 is the policy regarding a guard refusing post
20 assignment?

21 A. Someone who refuses post assignment
22 can be grounds for immediate termination. It is a
23 terminable offense. Everything is on a case by
24 case basis.

25 Q. You were asked a series of questions

1 JAMES JOSEPH DONOHUE

2 regarding Mr. Tuccio's assignment to the bag room.

3 And then his assignment, he asked you questions
4 about assignment out to the tarmac. Do you recall
5 that series of questions?

6 A. Yes, sir.

7 Q. Is the tarmac posting, if you will,
8 part and parcel of the bag room assignment?

9 A. At times it can be, yes.

10 Q. Why is that?

11 A. The bag room assignment originally
12 was for the agents to monitor the baggage that was
13 on the bag carousels, to prevent tampering or
14 threat by the ground handlers. That was a
15 deterrent. But then it was determined by our
16 client that there was still forms of pilfering
17 going on on the bags so at that point, we modified
18 the job assignment where the person in the bag
19 room would follow the bags from the bag room to
20 the loading of the aircraft, which involved being
21 outside on the tarmac.

22 Q. So if I understand you correctly, as
23 of 2009, when Mr. Tuccio was assigned following
24 the bags from the bag room out to the plane, that
25 was a job duty that he was required to perform at

1 JAMES JOSEPH DONOHUE

2 that time?

3 A. Yes.

4 Q. Earlier today Mr. Tuccio asked you
5 whether your mother was of Hispanic descent. Do
6 you feel comfortable with answering that question?

7 A. Yes.

8 Q. And is she?

9 A. Not that I'm aware of, no.

10 Q. Mr. Tuccio also asked you whether
11 anyone in your family is of Hispanic descent, and
12 I'm paraphrasing, do you feel comfortable
13 answering that question?

14 A. Yes, that's fine.

15 Q. Is there anyone of Hispanic descent,
16 to your knowledge, in your family?

17 A. My first cousin on my mother's side,
18 her mother is, I believe, Puerto Rican, so that
19 would make her Hispanic. My first cousin on my
20 father's side, I believe his father is of Hispanic
21 descent, also. And if I think further to see
22 who's married into the family and who their
23 children are, I can determine.

24 Q. That's okay.

25 So, Exhibit 2 is a sum and substance

1 JAMES JOSEPH DONOHUE

2 of the conversation you had with Mr. Tuccio,
3 correct?

4 A. Yes.

5 MR. WEISS: I have no further
6 questions.

7 You have the right to redirect.

8 MR. TUCCIO: I have a right --

9 MR. WEISS: To redirect this deponent
10 based on the testimony given. But you
11 can't go backwards. You can only -- I
12 asked him specific questions; you can't go
13 all the way to the beginning and start
14 over.

15 MR. TUCCIO: You claim that I refused
16 to pursue a discrimination charge; is that
17 correct?

18 THE WITNESS: What I recall, yes.

19 MR. TUCCIO: That never happened.

20 I have no further questions.

21 (Continued on next page to include
22 jurat.)

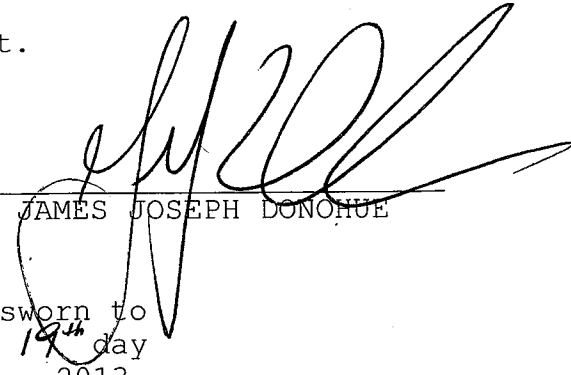
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A C K N O W L E D G M E N T .

I, JAMES JOSEPH DONOHUE, hereby
certify that I have read the transcript
of my testimony taken under oath in my
deposition of August 22, 2013; that the
transcript is a true, complete and correct
record of my testimony, and that the
answers on the record as given by me are
true and correct.


JAMES JOSEPH DONOHUE

Subscribed and sworn to
before me this 19th day
of November, 2013.


NOTARY PUBLIC

Gina Grath
Notary Public, State of New York
No. 02GR6114850
Qualified in Suffolk County
Commission Expires August 23, 2016

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C E R T I F I C A T E

STATE OF NEW YORK)
 SS.:
COUNTY OF NASSAU)

I, KIMBERLY R. JONES, a Shorthand Reporter and
Notary Public for and within the State of New
York, do hereby certify:

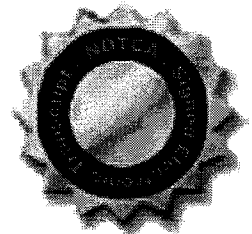
That the testimony herein was held before me at
the aforesaid time and place.

That said witness was duly sworn before the
commencement of the testimony and that the
testimony was taken stenographically by me and is
a true and accurate transcription of my
stenographic notes.

I further certify that I am not related to any
of the parties to this action by blood or by
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand.


KIMBERLY R. JONES



Declaration of Scott A. Weiss
EXHIBIT: 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SAMUEL TUCCIO,

Civil Action No.
12-5506 (JFB) (GRB)

Plaintiff,

-against-

FJC SECURITY SERVICES INC.

Defendant.

-----X

225 Cadman Plaza East
Brooklyn, New York

December 9, 2013
3:04 p.m.

DEPOSITION OF GLORIA NOEL, a Third-
Party witness herein, taken pursuant to Court
Subpoena and held at the above time and place
before Alicia Roberto, a stenotype reporter and
Notary Public of the State of New York.

1 GLORIA NOEL

2 did not do after that date is neither
3 material or relevant to this case.

4 If you want to ask another question, be
5 my guest.

6 Q Do you remember seeing me on the tarmac
7 standing next to an airplane?

8 MR. WEISS: Me meaning, Mr. Tuccio.

9 A No.

10 Q Did you ever refuse to work on the
11 tarmac standing next to an airplane?

12 MR. WEISS: Objection as to form. Also
13 assumes fact not in evidence.

14 You can answer.

15 A No.

16 Q Let me ask you one more thing. I hope
17 this is not -- I'm not trying to be offensive: Are
18 you Afro-American, or black?

19 A Black.

20 Q Black. Okay.

21 Did you ask to be put on the day shift?

22 MR. WEISS: Objection as to form, also
23 assumes facts not in evidence.

24 A No.

25 Q Did you ask for a promotion?

1 GLORIA NOEL

2 A No.

3 Q Did you ask for a shift change?

4 A No.

5 Q Did you ask for different assignments?

6 A No.

7 Q Were you ever offered a raise, a
8 promotion or a day shift?

9 A No.

10 Q Were you ever late for work?

11 A Yes.

12 Q What happened?

13 A Maybe traffic or something like that.

14 Q Did you get written up?

15 A Yes.

16 Q Did you call in sick; did you ever call
17 in sick?

18 A I believe so, yes.

19 Q Did you get written up for that?

20 A No.

21 Q Were you ever a no-show?

22 A No.

23 Q This is a general question: Were you
24 ever written up for anything?

25 MR. WEISS: Objection as to form, also

1 GLORIA NOEL

2 asked and answered, but go ahead.

3 A No. I remember for lateness, I think I
4 had it, like, twice in a week, but I don't remember.

5 Q Okay. For lateness.

6 Do you believe that your test scores
7 for the training class were related to your first
8 assignment?

9 MR. WEISS: Objection. Again, this is
10 beyond the scope. What a person believes or
11 does not believe, no offense, is irrelevant to
12 this case. It's beyond the scope of the
13 discovery.

14 Now, if you want to tell me how her
15 beliefs, Ms. Noel's beliefs, are material and
16 relevant, then I'll consider not going to
17 Judge Brown on this, but I don't know what
18 this person believes is relevant in this
19 case.

20 Q Did anybody tell you that?

21 MR. WEISS: I believe that was asked
22 and answered.

23 Q Do you believe that what you got on
24 your test scores counted toward what assignment you
25 got?

1 GLORIA NOEL

2 A No.

3 Q Why did you separate from FJC Security
4 Services?

5 MR. WEISS: Again, this is not material
6 or relevant, but if you can answer that
7 question, it's up to you.

8 I don't know why her separation has any
9 relevance in this case.

10 Q Why did you separate from FJC Security
11 Services?

12 A I was terminated. I was terminated.

13 Q You were what?

14 A Terminated.

15 Q Who terminated you?

16 A I believe, it was James Donohue.

17 MR. TUCCIO: D-O-N-O-H-U-E, James.

18 Q Okay. What did James Donohue say to
19 you on your last day?

20 MR. WEISS: I'm going to object as to
21 form because that is vague, but again, this
22 is way far field. Ms. Noel's termination is
23 not an issue in this case.

24 MR. TUCCIO: But there is --

25 MR. WEISS: Please tell me why this is

1 GLORIA NOEL

2 relevant.

3 MR. TUCCIO: This is relevant because I
4 want to see if what happened to her when
5 Mr. Donohue terminated her was the same as to
6 what happened to me.

7 MR. WEISS: Different situation.
8 Different circumstances.

9 MR. TUCCIO: That's why I'm asking her.

10 Q What did James Donohue say to you on
11 your last day?

12 MR. WEISS: Objection as to form.

13 MR. TUCCIO: You can answer.

14 A Um, I had gotten another job with the
15 airport, with another company, so I was juggling the
16 two, and, um, you know, I would call out more than I
17 should with FJC, that's why I was terminated. You
18 know, try and juggle both jobs and, you know.

19 Q So --

20 A But, I mean, he explained to me and I
21 understood.

22 Q Did he make any false statements?

23 A No, he didn't.

24 Q Did he say that the Port Authority of
25 New York and New Jersey was notified?

1 GLORIA NOEL

2 in the telephone conferences that the
3 perimeters of discovery is limited by
4 materiality and relevances. Sal said that to
5 you twice over the phone and on the record.

6 You know, I've given you some leeway
7 because you're Pro Se, but it's not necessary
8 to walk Ms. Noel down this road when her
9 termination has nothing to do with what's
10 alleged in this case.

11 Q Did Mr. James Donohue make any
12 ridiculous statements to frighten you?

13 MR. WEISS: Objection.

14 Please, do not badger the witness.

15 MR. TUCCIO: I am not badgering the
16 witness at all. I'm just asking what
17 happened to her.

18 A No, he explained what the policies of
19 the company was.

20 Q Do you think that Mr. Donohue acted
21 improper at any time?

22 MR. WEISS: Objection as to form.

23 Go ahead if you know what that means.

24 A No, he didn't. He explained and I
25 understand.

1 GLORIA NOEL

2 Q Do you remember what months you were on
3 the tarmac, what month of the year?

4 A I think it was, um, the time that I
5 worked in the bag room, if you notice, it was some
6 spaces with dates. Those were times that I work on
7 the jet bridge and on the jet way, on the tarmac, so
8 every now and then I would ask to work in the bag
9 room, so it was all...

10 Q Do you recognize what the name of that
11 post was when you were on the tarmac?

12 MR. WEISS: You're referring to --

13 MR. TUCCIO: Exhibit 2.

14 MR. WEISS: Objection as to form.

15 A What page is that, is that on the
16 10/31/09 date?

17 Q On any of the dates. Is there a post
18 for the tarmac?

19 A Is there a post for the tarmac, not
20 that I can remember.

21 Q All right. When you worked on the
22 tarmac, was it extremely cold with a 30 to 40-mile
23 an hour wind?

24 MR. WEISS: Objection to form.

25 Assume facts not in evidence.

1 GLORIA NOEL

2 Q Was it extremely cold with a 30 to
3 40-mile an hour wind?

4 A I mean, it was -- I worked there in the
5 winter and obviously it was cold, yes.

6 Q Was it raining?

7 MR. WEISS: Same objection.

8 A Once or twice it did rain, yes, yeah.

9 Q Did you complain to anyone about the
10 severe weather conditions when you were working on
11 the tarmac?

12 A No.

13 MR. WEISS: Objection as to form.

14 MR. TUCCIO: Okay. I guess I have no
15 more questions accept that one about
16 complaining to the management about Alberto
17 Cabanilla and James Donohue.

18 MR. WEISS: I'm going to try and figure
19 out how we're going to do this.

20 I wonder if it makes sense for me to
21 ask my questions and then you can ask
22 whatever questions you have off my questions,
23 and then we can circle back to the end.
24 That's the way I've done it in the past.
25 They don't want it to be a piecemeal. And

1 GLORIA NOEL

2 about 15 years.

3 Q Oh, did you?

4 A Yeah.

5 Q What did you do?

6 A Legal records.

7 Q So you're familiar with what a legal
8 deposition is and what's involved?

9 A Yes.

10 Q Now, Mr. Tuccio asked you a series of
11 questions about the bag room and I would like to
12 direct your attention to the time period from
13 August 1, 2009, to, about, January, let's call
14 January 21, 2010.

15 A Okay.

16 Q Is there a difference between bag room
17 and bag watch; were you aware of any difference?

18 A It's the same. I mean, you go in the
19 bag room to watch the bags, so it's pretty much the
20 same thing.

21 Q Because you're a security guard?

22 A Yes.

23 Q When you were first employed by this
24 company, I think you were employed -- let me back up
25 for a minute.

1 GLORIA NOEL

2 Q I think you testified that no one ever
3 said to you, you just had to pass, correct?

4 A Yes, yes.

5 Q And then you were eligible?

6 A Yes.

7 Q Your first assignment was to Charlie 1
8 or C1?

9 A Yes, Charlie 1.

10 Q That was outside, right?

11 A Yes, it was.

12 Q That was traffic duty?

13 A Yes, it was.

14 Q You were there for six months?

15 A As far as I could remember, yes, pretty
16 much about, yes.

17 Q I think you were first employed on
18 January 1, 2009; does that ring a bell?

19 A At FJC?

20 Q At FJC.

21 A No. On January 1, no. It was May, May
22 of '09.

23 Q Well, you had training in June of 2009;
24 do you recall doing that?

25 A Yeah.

1 GLORIA NOEL

2 terminal?

3 A Right. Majority of flights come out of
4 terminal 4.

5 Q So there are a lot of other airlines --

6 A Oh, yes, a lot, a lot.

7 Q Now, when you worked for FJC -- again,
8 I want you to focus on somewhere around May of '09
9 to January of 2010. Were you in -- you mentioned
10 inside and outside, but were you in other locations
11 as well?

12 A Yes.

13 Q Did those locations include being
14 outside?

15 A No. When I'm inside, I'm inside. When
16 I'm outside, I'm outside.

17 Q Okay. So you were in both places?

18 A Yes.

19 Q Traffic duty, is that outside?

20 A Yes. Outside.

21 Q And that was the first six months?

22 A Yes, about, yes.

23 Q In those six months did you observe
24 other guards --

25 MR. TUCCIO: Objection.

1 GLORIA NOEL

2 clarify it.

3 MR. TUCCIO: It wasn't the first six
4 months.

5 MR. WEISS: I'll clarify it. I get it.
6 I'll clarify it. I'll clarify it.

7 Q When you were on traffic duty, were you
8 on traffic duty in June?

9 A Yeah, because I started in May. That
10 was my first set of assignments.

11 Q When you were on traffic duty, were you
12 out in the elements?

13 A Yes, yes.

14 Q Did it rain while you were on traffic
15 duty?

16 A Yes, there were times when it rained,
17 yes.

18 Q Were you on traffic duty in July?

19 A Yes.

20 Q Was it 80, 90 degrees in July? It's
21 the summer.

22 A Yes, yes.

23 Q And you were outside?

24 A Yes.

25 Q How about in August, were you on

1 GLORIA NOEL

2 traffic duty in August?

3 A Yes, as far as I can remember, yes.

4 Q And you were outside to the elements?

5 A Yes.

6 Q So you recall doing traffic duty when
7 it rained and then when it was hot out?

8 A Yes, rain, hot, yes.

9 Q I've never done this job, but I'm
10 assuming that this is part of the job to be in the
11 elements, isn't it?

12 A Yes.

13 MR. TUCCIO: Let me ask you one
14 question.

15 MR. WEISS: No, no, no.

16 MR. TUCCIO: Why don't I have the
17 records?

18 MR. WEISS: Stop. Stop. Write them
19 down. You can ask when I'm done.

20 I get to re-recross and you get to
21 redirect.

22 THE WITNESS: Can I excuse myself to
23 the bathroom?

24 MR. WEISS: Please, please.

25 Off the record.

1 GLORIA NOEL

2 (Discussion held off the record.)

3 Q Let's focus on June for a second. You
4 said that you were at Charlie 1, which is outside
5 traffic; is that your testimony?

6 A Yes.

7 Q In June, I show about -- I'm aware of
8 about six times that you were at Charlie 1. Were
9 you at Charlie 4 as well?

10 A Yes.

11 Q What's Charlie 4?

12 A Charlie 4 is the same thing as Charlie
13 1; traffic.

14 Q Outside?

15 A Yes. Charlie 4, yes.

16 Q And I show that you were at Delta 1
17 twice, what is Delta 1?

18 A Delta 1 is arrival. Let me see. I
19 believe Delta 1 is arrival, Delta 2 is departure.

20 Q That's fine. If you don't remember,
21 that's fine.

22 A Okay.

23 Q How about Delta 2?

24 A Delta 2, yes.

25 Q Is that arrivals?

1 GLORIA NOEL

2 A Either arrivals or departure.

3 Q Is it inside or outside?

4 A Wait a minute.

5 Q You want to think about it for a
6 minute?

7 A Yes.

8 Delta 1 and Delta 2 is, um, departure,
9 that whole strip, yes. I think the east side was
10 Delta 1 and, yeah, the --

11 Q Is that inside or outside, the Deltas?

12 A The Delta is outside, yeah.

13 Q So Delta 1 and 2 is outside?

14 A Yeah.

15 Q That's departure. Does Delta stand for
16 departure as in D, if you know?

17 A I don't remember.

18 Q So you had D1 and 2 which is departure,
19 which you were outside?

20 MR. TUCCIO: Can I have an objection.

21 Delta 2 is inside, Delta 1 is outside.

22 MR. WEISS: That's your contention.

23 She's testifying. That's not an objection.

24 She's testifying. If you want to clarify,
25 you talk to her about it.

1 GLORIA NOEL

2 Q So you were at Delta 1 and 2 and
3 Charlie 1 and 4 through June and July; do you recall
4 that?

5 A Yeah, I forgot about the Deltas.

6 Q You were in Delta 1 and 2 and 1 and 4
7 through August; do you recall that?

8 A Yes.

9 Q What is Charlie 3?

10 A Charlie 3 is outside too. I believe
11 Charlie 3 is on the -- I think Charlie 1 is where
12 the traffic enters, Charlie 3 is where it exits, if
13 I remember correctly.

14 Q Okay. In September you were again at
15 Delta 1, Charlie 4, 2 and 3, all outside; is that
16 your recollection?

17 A Yes, I would say yes, yes. But I did
18 do those posts. I don't remember the month and
19 whatever, but I did do those posts around that time,
20 yes.

21 Q When you were at Charlie -- again,
22 we're focusing on June, July and August.

23 A Yeah, that was pretty much in the
24 beginning.

25 Q When you were at Charlie 1 and 4 and 3

1 GLORIA NOEL

2 and Delta 1 and 2, that was outside, correct?

3 A Yes.

4 Q Did you see other guards at the posts?

5 A Yeah.

6 Q Were those guards also of color?

7 A They're mixed races. We had an Indian

8 guy, we had two Indians from India, we had a

9 Hispanic, we had African Americans, um --

10 Q And you're focusing on June to

11 September, there?

12 A Yeah, yeah. It was mixed.

13 Q Okay. And your colleagues were there

14 in the rain and the cold and the rest of it just

15 like you were?

16 A Yeah, you have the posts, you go to

17 your post and you do what you have to do.

18 Q Okay. I think that you testified that

19 based on Exhibit -- let's go to Exhibit 2.

20 Mr. Tuccio had you go through these 13 pages, and

21 let's do it in two pieces, break it down a little

22 bit.

23 This is October 31, 2009?

24 A Mm-hmm.

25 Q This is a company document, so we

1 GLORIA NOEL

2 produced it and we're supposed to show that you are
3 -- is that your signature there, by the way?

4 A Yeah, um-hmm.

5 Q Four hours, 09:00. I'm looking for the
6 posting.

7 MR. WEISS: Off the record.

8 (Discussion held off the record.)

9 Q Okay. I think Mr. Tuccio asked you a
10 series of questions about the bag room. Let's talk
11 about the bag room.

12 What is the bag room and, again, focus
13 your attention on November or October of 2009. What
14 did you observe at the bag room? What was the post?

15 A The bag room is where the, um, when the
16 luggage is being checked by TSA, it comes through
17 the system and comes down the conveyer belt and then
18 it would be selected as to which airline, what goes
19 to -- well, of course, well -- when, when, let me
20 put it this way.

21 Q Take your time.

22 A Each airline had a certain time for the
23 bags to come out depending on the flight. So for
24 instance, like, Avianca, you would go in and they
25 would come down the conveyer belt, so they would

1 GLORIA NOEL

2 just watch it, you know, monitor. There would be,
3 if I remember correctly --

4 Q Let me just slow you down.

5 Is this inside a building where these
6 bags are coming down where you are?

7 A It's um, it's, yes, it's inside, yeah,
8 but the door -- what to put it -- it's a ground
9 floor of the building and then there were these huge
10 doors, you know, that goes up, like, a garage door.

11 Q Okay.

12 A You know, pull it up and it goes up and
13 down, so you can see outside, just like a garage.

14 Q So you're describing the - I'm not
15 trying to change your testimony. I'm just trying to
16 understand.

17 MR. TUCCIO: Objection.

18 I just want to say, you objected when I
19 asked this.

20 MR. WEISS: I understand.

21 MR. TUCCIO: How come you're going into
22 it?

23 MR. WEISS: I understand.

24 MR. TUCCIO: How come you're going into
25 it?

1 GLORIA NOEL

2 MR. WEISS: I'm just trying to
3 understand.

4 MR. TUCCIO: You can't have it both
5 ways.

6 MR. WEISS: No one in the room has been
7 in that baggage room.

8 MR. TUCCIO: But there are many garage
9 doors, there's about 10, 11, 12.

10 MR. WEISS: Stop. You can't testify.
11 You'll get to ask questions. She's
12 testifying.

13 Q So I understand you correctly, it looks
14 like a garage with a garage door?

15 A Yes.

16 Q And the bags are coming through the
17 garage door?

18 A No, no, no. Let's say this is a door
19 (indicating), this is a conveyer belt, comes in an
20 L-shape and then comes out (indicating).

21 Q From the ceiling?

22 A No, there's a big whatever, but you
23 can't see where it's coming from. It just shoots
24 down on the belt, shoots down on the belt, and then
25 we pull it off (indicating).

1 GLORIA NOEL

2 Q Is the garage door open or closed?

3 A Open, but there were times that we
4 would close it, but pretty much open.

5 Q Why would you close it at times?

6 A Sometimes when it's, like, really cold,
7 then we close it for a little bit.

8 Q What was your job when you were there,
9 what were you supposed to do?

10 A Well, the guys usually would, you know,
11 pull the bags off.

12 Q The baggage handlers?

13 A Yeah. Same security.

14 They would pull the bags. But we would
15 watch to see if anything was broken, if anything
16 was, like, you know, is falling out, if a zipper is
17 open, anything like that. If anything like that is
18 open, we pull it aside and we can check to see if
19 anything is leaking or whatever, whatever.

20 Q The airport security guards would do
21 that?

22 A Yeah, yeah we did that, yeah.

23 Q And then once those bags were
24 segregated, then what would you do?

25 A When the bags are segregated, we would

1 GLORIA NOEL

2 have the Avianca workers there with us as well.

3 Q The baggage handlers? Who are the
4 Avianca employees?

5 A They weren't baggage handlers, they
6 were, Avianca, maybe they were workers, whatever, I
7 would say that. But if a bag is broken we would put
8 -- pull it aside and we would pretty much take care
9 of it.

10 Q Do you know why the garage door is
11 open?

12 A No, they never say.

13 Q Is there any heaters in the ceiling or
14 anything? Is there any heat in the room, if you
15 know?

16 A Was there heat in that room? I don't
17 remember. I don't remember. I know sometimes when
18 it was really windy, we would close it, but heat, I
19 don't remember, heat.

20 Q So you spent some time in the elements
21 and inside --

22 A Yes.

23 Q -- during this time that you were near
24 the bag room or in the bag room, rather?

25 A When I was in the bag room, I was in

1 GLORIA NOEL

2 the bag room, but the other times when I was
3 outside, it was not in, you know, in the...

4 Q So just so I'm understanding you, when
5 you were in the bag room you were inside?

6 A Yes, yes, yes.

7 Q In your response to Mr. Tuccio's
8 question, you indicated that there were other
9 assignments that you were involved in while you were
10 in the bag room?

11 A Yes.

12 Q You mentioned some gaps?

13 A Yes, yes.

14 Q And those other assignments that you
15 mentioned, they were at other places?

16 A Yes.

17 Q In the airport?

18 A Yes.

19 Q Were they both inside and outside?

20 A Some was on the jet way, on the jet
21 bridge.

22 Q Slowly. The jet way is outside?

23 A No, inside.

24 Q Okay. What's outside?

25 A Outside is when you would come down

1 GLORIA NOEL

2 know what they call it.

3 Q Conveyer?

4 A It's something -- like, the luggage
5 would slide down, you know, and the guys would grab
6 it and put it on the trolly and take it to where the
7 area where, of course, customs would then have to
8 check it, and passengers would then come to receive
9 their bags.

10 Q While you were doing this, this is on
11 the ground outside the building?

12 A Yeah, right underneath the plane,
13 right, yes.

14 Q And you were doing these assignments in
15 November, December and January, correct?

16 A Yes.

17 Q Were you the only airport security
18 agent doing that type of work in October, November,
19 December, January?

20 A No, no.

21 Q Were there other airport security?

22 A Yes.

23 Q Were they people of color as well?

24 A I remember this one lady, she was
25 Italian, um, and Ann is Italian.

1 GLORIA NOEL

2 Q And African American?

3 A No, she was Italian.

4 Q No, no. Were there others?

5 A Yes, there were others. The lady that
6 I call.

7 Q She is African American?

8 A Yeah, she's African American. Ann
9 Gazara, she's Italian.

10 Q Why don't you spell that, if you can,
11 for Alicia.

12 A Spell what?

13 Q The one that you just mentioned, the
14 one with the Italian decent.

15 A A-N-N G-A-Z-A-R-A.

16 There was another -- there was some
17 Hispanics too, Indian from India, yeah, it was
18 mixed.

19 Q It was mixed?

20 A Yeah.

21 Q You observed these other airport
22 security agents outside on the tarmac during
23 October, November, December?

24 A Yeah, we all did the same thing.

25 Q Just so I understand, the jet bridge is

1 GLORIA NOEL

2 and I were defining the same thing.

3 In addition to what you testified to
4 about being on the tarmac and being on the ground
5 underneath the plane and being there on traffic duty
6 at Charlie 1, 2, 3, 4 and Delta 1 and 2, during this
7 time from about November to January 2010, were you
8 in any other outside locations?

9 A No. No, mm-mm. As far as I can
10 remember, no.

11 Q Now, I think in response to a question
12 that Mr. Tuccio posed to you about your training --
13 let's see if I can find it. Just bear with me for a
14 minute.

15 I think you testified that no one said
16 to you that the scores in your training, and I'm
17 paraphrasing, will dictate your initial assignment;
18 do you recall talking about that?

19 A Yes.

20 Q So nobody ever said to you if you do
21 better, we're going to give you a better assignment?

22 A No, not to me.

23 Q And you weren't present with anybody
24 else that that was said to?

25 A No, no.

1 GLORIA NOEL

2 Q Mr. Tuccio asked you about Mr. Alberto
3 Cabanilla; do you remember him?

4 A Yes.

5 Q Okay. Let me direct your attention to
6 -- you mentioned in your testimony that you, you
7 said you had called in sick; do you remember that
8 testimony?

9 A Yeah, yeah.

10 Q And I think you called out, isn't that
11 the case?

12 A Yes. He would call and say --

13 Q You didn't call in properly and then
14 you were terminated?

15 A No, the reason I was terminated, I did
16 call out a few times, as I said I was trying to
17 juggle both jobs.

18 Q I understand.

19 A And then according to company policy, I
20 went over the limit.

21 Q And you understood that you went over
22 the limit?

23 A Yeah.

24 Q You had no problem with that because
25 someone had told you that was the policy, right?

1 GLORIA NOEL

2 A Yeah, I knew. I knew.

3 Q When you were tended with the Subpoena,
4 were you given a check?

5 A Yes.

6 Q How much did you get?

7 A \$45.00. And I returned it, because I
8 wasn't sure.

9 Q You're entitled to that.

10 A Mr. Tuccio told me that I have to
11 return it and then he said he would send me another
12 one.

13 Q Have you been paid since?

14 A No.

15 MR. WEISS: You have to give her the
16 45.

17 MR. TUCCIO: Can I make a remark?

18 The process receiver tried to deliver
19 the Subpoena to you three times on Friday,
20 and this morning I contacted him and said he
21 would try and get it to you this morning
22 before she came here.

23 MR. WEISS: I just want to make sure
24 she get's it. That's all.

25 Off the record.

1 GLORIA NOEL

2 (Discussion held off the record.)

3 Q When you went to stand near the plane,
4 when it was unloading, was that part of the job
5 duty, something that you had to do?

6 A When I went?

7 Q You mentioned that you would stand
8 outside on the ground under the jet bridge.

9 A Yes, that is out of there.

10 Q That's the job duty.

11 A Yes.

12 Q And you understood that to be your job
13 to do that?

14 A Yes.

15 Q When you were in the bag room observing
16 the unloading of the luggage in November, December,
17 January '09, 2010, that was part of your job duty?

18 A Yes, it was.

19 Q When you worked on the, I'm going to
20 say the tarmac, down on the outside, you did that in
21 the rain and in the snow in November?

22 A Yeah, I mean, whatever the element was,
23 if the plane comes in, we have to do what we have to
24 do.

25 Q You understood that it was part of

1 GLORIA NOEL

2 your --

3 A Yes.

4 Q -- you understood that it was part of
5 your job to work in the elements, whatever they may
6 be?

7 A Yeah, yeah.

8 Q No one told you otherwise?

9 A Otherwise meaning...

10 MR. WEISS: I'll withdraw.

11 Q Once you were terminated -- I think I
12 understand your testimony, but I want to make sure I
13 understand it clearly.

14 Once you were terminated from FJC, you
15 went to work for the other security guard company?

16 A I was working at the other job before I
17 was terminated.

18 Q So when you were terminated from FJC
19 you then continued with the other security guard
20 company?

21 A As we speak, I'm still working for
22 them.

23 Q Oh, you still work for that company.
24 What's the name of that company?

25 A ISS Actions Security.

1 GLORIA NOEL

2 Q So I understand your testimony, you
3 didn't go back to FJC or take any steps in relation
4 to your termination from FJC, you just continued to
5 work at ISS?

6 A Yes, I just continued. As I said, I
7 started before I was terminated from FJC. I mean, I
8 was trying to juggle the two, but it didn't work
9 out.

10 After I was terminated from FJC, I just
11 continued at --

12 Q ISS.

13 A Yes, yes.

14 Q But you didn't complain to anyone at
15 FJC, you just continued, right?

16 A Yeah, I didn't have anything to
17 complain about.

18 Q Okay.

19 MR. WEISS: I have no other questions.

20 CONTINUED EXAMINATION BY

21 MR. TUCCIO:

22 Q I just want to ask a couple of
23 questions.

24 We talked about -- Mr. Weiss talked
25 about Charlie 1, 2, 3 and 4.

1 GLORIA NOEL

2 A No.

3 Q Were any other security guards you
4 noticed assigned exclusively every single day, week
5 after week, after week to outside posts?

6 MR. WEISS: Objection as to form. I
7 don't know if it's in the witness's personal
8 knowledge.

9 Q Do you remember anybody?

10 A Um, I remember one of the Indian guys
11 -- I don't remember his name that used to work out
12 there -- most of his posts was out there, because he
13 didn't like to be inside. He was there for a while.
14 I don't remember his name.

15 Q Would it be a fair statement to say
16 that you were rotated?

17 A Yes.

18 Q Would it be fair to say that other
19 security guards that worked for FJC were rotated?

20 A Yes.

21 Q Let's go back to Mr. Weiss's question
22 about working on the tarmac outside.

23 How often did you work the tarmac, were
24 you there three times a week?

25 MR. WEISS: Again, I have an objection.

1 GLORIA NOEL

2 I'm assuming you mean, just so I understand,

3 I'm assuming you mean the space under the jet

4 bridge that we talked about.

5 Q No, what I mean by tarmac is, when they
6 have people on the tarmac next to the plane watching
7 the luggage people unload; how often did you do
8 that?

9 A It wasn't everyday.

10 Q No. Was it four times a week?

11 A No, I wouldn't say four times. I might
12 do it for, like, twice or three times a week and
13 then I may not do it for another three weeks. It
14 wasn't consistent.

15 Q It wasn't a steady assignment?

16 A Yes.

17 Q You weren't picked on or singled out
18 for that assignment?

19 MR. WEISS: Objection as to form.

20 A No, I don't believe I was singled out,
21 no.

22 Q Okay. All right. So, basically, all
23 right, you were rotated?

24 MR. WEISS: Objection.

25 Asked and answered.

1 GLORIA NOEL

2 A Yes. If I was rotated, that is the
3 question, right?

4 Q Yes.

5 A Yes.

6 Q Was your training in May of 2009?

7 A Yes, because I was hired shortly
8 thereafter.

9 Q Because the defendant was supposed to
10 supply me --

11 MR. WEISS: You can't discuss that with
12 her.

13 Q I wasn't given the records. I was
14 given the records of May 2009 and your name was not
15 on it.

16 MR. WEISS: Mr. Tuccio, we've been down
17 this road. If there is something else that
18 you are looking for, put it in writing and I
19 will produce it if we have it.

20 Q Your training was in May 2009 and you
21 began work around June 1, 2009?

22 A Yeah, around there, yeah.

23 Q Now, you still work for ISS Action
24 Security?

25 A Yes.

1 GLORIA NOEL

2 MR. WEISS: Objection as to form.

3 Assumes facts not in evidence.

4 Q Is that correct? But the cold air
5 would blow in; is that correct? So it would be cold
6 in the bag room?

7 A Let me tell you my experience.

8 The doors, some of the doors were open,
9 some were closed. The doors would be open if a
10 particular airline is using that particular conveyer
11 belt, if not, it was closed.

12 Whenever we, you know, the conveyer
13 belt is in operation for, like, Avianca for example,
14 sometimes we used to go early before loading, so
15 while we were in there, if it gets really, like,
16 freezing, like, cold, the guys would pull the door
17 and one time to, you know, put the luggage on the
18 little trolly to take it to the plane, obviously it
19 wouldn't open up.

20 Q Okay. Now, on these sheets I gave you
21 there were 12 sheets. All right.

22 MR. WEISS: 13.

23 Q All right. There are 12 sheets which
24 have your name in the bag room for November,
25 December 2009 and January 2010.

1 GLORIA NOEL

2 Now, that's about 12 weeks. So you
3 were on the bag room about once a week; is that
4 correct?

5 A Probably.

6 Q You were not assigned that everyday?

7 A No.

8 Q No, you were not.

9 When you were not assigned there, where
10 did you work?

11 A In the jet bridge, jet way, you know,
12 different. Sometimes on the tarmac.

13 Q So would I be correct in saying you
14 were not stuck in any one job?

15 MR. WEISS: Objection as to form.

16 Q And you were not stuck day to day
17 working on an outside post, sometimes you would be
18 outside, sometimes you would be inside?

19 A Yeah.

20 Q That's correct.

21 MR. TUCCIO: Did you want to make a
22 phone call?

23 MR. WEISS: I think we answered the
24 question.

25 MR. TUCCIO: All right. Thank you for

1 GLORIA NOEL

2 coming here, Ms. Noel.

3 I have no further questions.

4 CONTINUED EXAMINATION BY

5 MR. WEISS:

6 Q Mr. Tuccio asked you about Delta 1 on
7 the second floor of departure. Departure is on the
8 second floor; that's still outside, right?

9 A Yeah, departure.

10 Q I'm trying to remember JFK, and correct
11 me in I'm wrong, there's a road that goes in front
12 of the terminal and it's outside, right?

13 A Yes.

14 Q Where is Delta 1?

15 A It's -- there's levels.

16 Q I was just there.

17 A There's, um, arrival is level 1.

18 Q Correct.

19 A Departure is level 2.

20 Q And where is the post upstairs? Is it
21 inside the building or outside the building?

22 A All right. There's some big doors,
23 right?

24 Q Yes.

25 A The post is outside.

1 GLORIA NOEL

2 Q What post is outside?

3 A The Delta 1.

4 Q That's what I thought you meant.

5 A Yeah, yeah. It's outside.

6 Q And then Mr. Tuccio asked you about
7 Charlie 2. He kept saying Charlie 4 in the middle,
8 but I think he means Charlie 2. That's downstairs,
9 correct?

10 A If I remember correctly, yes,
11 downstairs.

12 Q Where is Charlie 2's post, is it inside
13 or outside, based on your recollection?

14 A I believe it was outside.

15 Q When you were posted to Charlie 2 you
16 were outside?

17 A Yes.

18 Q When you were posted to Delta 1 you
19 were outside?

20 A Yes. If I may say, Delta 1 even though
21 we were outside, the doors in the arrival dorm,
22 once, you know, periodically we could go in, you
23 know.

24 Q To get warm?

25 A To get warm, yeah. It's not like you

1 GLORIA NOEL

2 had to, you know, stay there. If traffic got heavy
3 you have to go out and direct, but then, you know,
4 you have the options to periodically come in and
5 then you would get, like, breaks, another security
6 would give us a 15 minute break.

7 Q While you were assigned to Delta 1 you
8 saw a mix of people of color?

9 A Yes, definitely.

10 Q When you were assigned to Charlie 2,
11 you saw a mix of people of color?

12 A Yes, all my posts were mixed.

13 Q Like Delta 1, is there an ability to go
14 into the building and still remain at the post to
15 warm up?

16 A No, Delta 1 is no -- is only, um, Delta
17 1, if I remember correctly, Delta 1 and Delta 2 was
18 the same. One side to the other one. I believe the
19 east side was Delta 1, if I remember correctly, and
20 then the west side was Delta 2, I believe.

21 Q That was outside?

22 A Yes. Outside, you know, on the
23 second -- on the second part.

24 Q Yeah, I've been there.

25 Charlie 2, is an outside post; to your

1 GLORIA NOEL

2 recollection; is that true?

3 A Yes, as far as I can remember, Charlie
4 2 is outside.

5 Q And that's downstairs?

6 A Yes.

7 Q And if you wanted to, your
8 recollection, not me, you, if you're there in
9 December and it's cold and it's 2009, you can go
10 into the building to warm up?

11 A That's just Delta.

12 Q That's only Delta?

13 Okay. But you have breaks.

14 A Yes, but with Charlie 3 you have a
15 break, Charlie 1 you do get breaks, you have 15
16 minute breaks.

17 Q Or you have relief, right?

18 A Yeah, relief, right. And you get your
19 lunch.

20 MR. WEISS: I have no other questions.

21 MR. TUCCIO: I have one other question.

22 CONTINUED EXAMINATION BY

23 MR. TUCCIO:

24 Q In terminal 4 there are other posts
25 with other names, Romeo and other posts inside the

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A C K N O W L E D G M E N T

STATE OF NEW YORK)

:ss

COUNTY OF)

I, GLORIA NOEL, hereby certify that I have read
the transcript of my testimony taken under oath in my
deposition of December 9, 2013; that the transcript is
a true, complete and correct record of my testimony,
and that the answers on the record as given by me are
true and correct.

GLORIA NOEL

Subscribed and Sworn to before me
this ____ day of _____, 20__

NOTARY PUBLIC

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C E R T I F I C A T E

I, ALICIA ROBERTO, a shorthand reporter and
Notary Public within and for the State of New York, do
hereby certify:

That the witness whose testimony is hereinbefore
set forth, was duly sworn by me, and that such
testimony is a true record of the testimony given by
such witness.

I further certify that I am not related to any
of the parties by blood or marriage, and that I am in
no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand.

Alicia Roberto

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SAMUEL TUCCIO,

Plaintiff,

-against-

Civil Action No.
12-5506
(JFB) (GRB)

FJC SECURITY SERVICES, INC.,

Defendant.
-----x

100 Federal Plaza
Central Islip, New York

September 12, 2013
1:37 P.M.

DEPOSITION of FJC SECURITY SERVICES, INC., the
Defendant herein, by EFRAIN SANTIAGO, taken pursuant
to Subpoena, and held at the above time and place
before Ginnette Corr, a stenotype reporter and Notary
Public of the State of New York.

1 EFRAIN SANTIAGO

2 Q Please state your position.

3 A Of the work?

4 Q Yes.

5 A I work with New York State DOT, the
6 HELP program.

7 Q Are you an instructor there?

8 A No.

9 Q What was your position at FJC Security
10 Services on May 1, 2009?

11 A Training manager.

12 Q Describe your work experience before
13 FJC Security Services.

14 A I was human resources for a couple of
15 previous companies, and I've been a training
16 instructor for the past maybe 25 years.

17 Q When did you begin working for FJC
18 Security?

19 A I believe it was November of 2003.

20 Q What was your position and location?

21 A Training manager at Building 75, JFK
22 Airport.

23 Q What training did you receive to
24 qualify you to be an instructor?

25 A I was instructor certified by New York

1 EFRAIN SANTIAGO

2 State as a security guard instructor. I had
3 certification with an FAA program for airport
4 training. And normally, company training is
5 something that anybody who works for the company
6 can perform. There's no actual certification
7 required. Company training.

8 Q Do you have a college degree or
9 certificate?

10 A No.

11 MR. WEISS: Other than the certified
12 instructor certificate, right?

13 THE WITNESS: Certificate for certified
14 instructor, yes.

15 Q Who hired you or appointed you to the
16 position of instructor, training instructor?

17 MR. WEISS: Objection as to form.

18 You may answer.

19 A John Pagnotta, the vice president of
20 FJC at that time.

21 Q Approximately how many times per
22 year -- all these questions I'm asking all relate
23 to 2009, even though I don't preface them with
24 2009.

25 Approximately how many times per year

1 EFRAIN SANTIAGO

2 did you train a new class?

3 A I don't recall.

4 Q How many --

5 A They vary.

6 Q About how many people were in a typical
7 class?

8 A They average anywhere from 10 to maybe
9 20 people.

10 Q What did the training consist of?

11 A Company orientation, security guard
12 responsibilities and knowledge of the locations
13 where they're working in the airport.

14 Q How many hours per day and how many
15 days was the training for an airport security
16 agent?

17 MR. WEISS: Objection as to form.

18 You may answer if you understand the
19 question.

20 A I don't fully understand the question.

21 Q When you were instructor for the
22 training of an airport security agent, how many
23 days did this go on? Did it go on for five days,
24 six days?

25 MR. WEISS: Same objection.

1 EFRAIN SANTIAGO

2 designation D --

3 A Shows the driver endorsement with
4 the --

5 Q Which I got as a result of taking that
6 course.

7 A Right.

8 Q The other --

9 A This is the first page of the customer
10 service. This is the first page for traffic
11 responsibilities. Fire extinguishers, fire safety
12 (indicating).

13 MR. WEISS: Is that a first page?

14 THE WITNESS: That's a first page, yes.

15 A This is a first page of memorandums,
16 just company rules and regulations based on
17 company orientation. The use of force. This is
18 all New York State in reference to the laws as to
19 what you can and cannot do as a security officer.
20 Report writing procedures is the next page. This
21 is the cover page. Communications, public
22 relations. This is the first page. And the FJC
23 contact list, which is -- this is -- I think this
24 is the only page, if I'm correct, that I gave.
25 Just tells you what your contacts are, depending

1 EFRAIN SANTIAGO

2 on where they place you. And this is the first
3 page of the old employee handbook that was given
4 out at that time.

5 MR. WEISS: Mr. Tuccio, if you would
6 just indulge me just one question, because I
7 just want to make sure something's clear.
8 I'll ask you, and then I'll confirm. Are
9 these first pages, this being use of force
10 and then report writing?

11 MR. TUCCIO: Yes.

12 MR. WEISS: These are first pages. Do
13 you understand that?

14 THE WITNESS: Yes.

15 MR. WEISS: Go ahead. I just wanted to
16 make sure that was clear.

17 Q Would I be correct in saying that this
18 was specialized training for the position of
19 airport security agent?

20 MR. WEISS: Objection as to form.

21 If you understand the question.

22 A As far as specialized training, no.
23 This was our basic training that security officers
24 normally should have had already when they went
25 through the New York State training.

1 EFRAIN SANTIAGO

2 A Usually, I kept an individual form,
3 which went into each person's file. So if I
4 wanted to know if the person had the training, I
5 just opened their file. It was an individual
6 form.

7 Q Now, I just want to make one thing
8 clear.

9 Is this a training file that's separate
10 from the employee's personnel file?

11 A Correct.

12 Q What did you do with the test scores
13 that new hires in your training class got?

14 A The training was mostly a review. It
15 was a pass or fail evaluation.

16 Q You said they were stored in the
17 training file?

18 A Correct.

19 Q Are those test scores used in deciding
20 which assignments were given to new employees?

21 A No.

22 Q New employees in 2009 were trained by
23 an instructor, John Harding, of Delta Air Lines to
24 be cargo security screeners; is that correct?

25 A Correct.

1 EFRAIN SANTIAGO

2 Q Again, is this not specialized training
3 for an airport security agent?

4 MR. WEISS: Objection as to form.

5 If you understand the question, you may
6 answer.

7 A No.

8 Q The Delta Air Lines instructor, John
9 Harding, gave a test at the end of the eight-hour
10 course; is that correct?

11 MR. WEISS: Objection as to form.

12 You're still talking about the
13 screening test, right?

14 MR. TUCCIO: We're talking about the
15 Delta Air Lines -- yes, cargo security
16 screening test.

17 MR. WEISS: Still objection as to form.
18 You may answer if you understand the
19 question.

20 A Yes.

21 Q Did you correct the test?

22 A No.

23 Q What was done with the test scores?

24 A Delta Air Lines kept the original.
25 They just gave me copies to put in our records.

1 EFRAIN SANTIAGO

2 Delta was responsible to maintain those records.

3 Q Those test scores are stored in the
4 training folder; is that correct?

5 A Just the attendants that I had,
6 attendance sheet, which had the scores on them.
7 It's basically keeping track of the attendants,
8 who was there. Delta kept the originals.

9 Q You kept the attendance sheet, which
10 did not have the scores on them? Is that what
11 you're saying?

12 A I said it did have the scores.

13 Q Now, are the test scores from the cargo
14 security screener test used to decide whether or
15 not an airport security agent got assigned to
16 Building 20 doing the testing of luggage for
17 traces of explosives?

18 MR. WEISS: Objection as to form.

19 You may answer if you understand it.

20 A I don't fully understand the question.

21 MR. WEISS: Would you repeat the
22 question?

23 (The requested portion of the record
24 was read back by the reporter.)

25 A Yes.

1 EFRAIN SANTIAGO

2 Q Also, did you not -- did you teach a
3 one-day class on driving a vehicle on the Tarmac
4 at JFK Airport?

5 A No.

6 Q You did not teach this class on airport
7 security agent?

8 A Then I'm misunderstanding your
9 question.

10 MR. TUCCIO: Can you read the question
11 back for me?

12 (The requested portion of the record
13 was read back by the reporter.)

14 Q Did you also teach a one-day class on
15 driving a vehicle on the Tarmac at JFK Airport?
16 That is that class in Exhibit 1.

17 A I gave the Port Authority AOA driver
18 safety course, which is a -- basically a four-hour
19 training class.

20 Q Is this not specialized training for an
21 airport security agent?

22 MR. WEISS: Objection as to form.

23 You may answer if you understand the
24 question.

25 A No.

1 EFRAIN SANTIAGO

2 Q Did you give a test at the end of this
3 one-day course?

4 A Yes.

5 Q Did this result in the designation DR1
6 or EV on the ID badge given by the Port Authority
7 of New York and New Jersey?

8 MR. WEISS: Objection as to form.

9 A If you passed the test, Port Authority
10 decides if they're going to issue you a driver
11 status, which is the DR1.

12 Q What did you do with the test scores?

13 A I put them in the individual training
14 file.

15 Q Are the test scores from the test for
16 driving a vehicle on the Tarmac used to decide
17 whether or not an airport security agent gets
18 assigned to driving Rover 1 or Rover 2 at JFK
19 Airport?

20 MR. WEISS: Objection.

21 A No.

22 MR. WEISS: Just so the record is
23 clear, Mr. Tuccio, Rover 1 and Rover 2,
24 that's just a vehicle, right?

25 Q He wants you to answer.

1 EFRAIN SANTIAGO

2 THE WITNESS: It's a position. It's
3 just a driving position. It's like a call
4 sign for a driving position.

5 MR. WEISS: Go ahead.

6 THE WITNESS: Just so they can identify
7 people easier, who's working where.

8 Q On what basis are new employees given
9 their first assignment? There has to be some
10 basis for this.

11 MR. WEISS: Objection as to form.

12 A I do not know.

13 Q Did you influence the placement of new
14 hires on their first assignment in any way?

15 MR. WEISS: Objection as to form.

16 A No.

17 Q This refers the question to May 2009.

18 What were the names of the other
19 employees and their positions in the personnel
20 department?

21 A I do not recall who they were at the
22 time.

23 Q Was one of them Louise Davis?

24 A Louise was a dispatcher.

25 Q Did Louise Davis speak Spanish?

1 EFRAIN SANTIAGO

2 Assumes facts not in evidence. You may
3 answer if you know.

4 A No.

5 Q Do you still work in any capacity for
6 FJC Security Services?

7 A No.

8 Q Why did you separate from FJC?

9 A Other employment.

10 Q Did you leave voluntarily?

11 A Yes.

12 Q Did the test scores of your four or
13 five-day training class, basic training, or the
14 test scores of your one-day driving class or the
15 test scores of the one-day cargo screening class
16 have any influence on the first assignment given
17 to a new employee?

18 MR. WEISS: Objection as to form.

19 You may answer if you understand that
20 compound question.

21 A No.

22 Q Do you remember an employee named
23 Justin Avery in your general training class of
24 May 2009?

25 A I do not recall.

1 EFRAIN SANTIAGO

2 you.

3 MR. WEISS: I have just one.

4 EXAMINATION BY

5 MR. WEISS:

6 Q Mr. Santiago, I have a question. You
7 testified in response to Mr. Tuccio's question
8 whether the screening scores -- he asked you
9 whether the screening scores for cargo screening
10 at Building 75 dictated or determined who got the
11 assignment for cargo screening, and you said yes.

12 What level of score dictates the
13 assignment or could you explain that, actually,
14 what that means, what your yes means?

15 A It's basically a pass or fail. So if
16 you pass the course, then you are offered a
17 position. If you do not pass the course, then you
18 cannot get a position. It's mostly basically
19 evaluating each individual on pass or fail.

20 MR. WEISS: I have no further
21 questions. I do have one other question.

22 Excuse me.

23 Q So any guard, any airport security
24 guard that has passed the screening test -- as in
25 P, meaning passed -- is eligible for this

1 EFRAIN SANTIAGO

2 assignment?

3 A Yes.

4 Q Regardless of experience or anything
5 else?

6 A Correct.

7 MR. WEISS: I have no further
8 questions.

9 (Time noted: 2:19 p.m.)

10 * * * *

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2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)
5 COUNTY OF _____) ss:

6

7 I, EFRAIN SANTIAGO, hereby certify that I have
8 read the transcript of my testimony taken under oath
9 in my deposition of September 12, 2013; that the
10 transcript is a true and complete record of my
11 testimony, and that the answers on the record as
12 given by me are true and correct.

13

14

EFRAIN SANTIAGO

15

16

17 Subscribed and sworn to before me
18 this _____ day of _____ 2013.

19

(NOTARY PUBLIC)

20

21

22

23

24

25

C E R T I F I C A T E

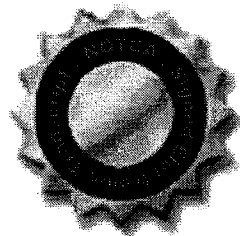
I, GINETTE CORR, a shorthand reporter
and Notary Public within and for the State of
New York, do hereby certify:

That the witness, whose testimony is
hereinbefore set forth, was duly sworn by me,
and that such testimony is a true record of the
testimony given by such witness.

I further certify that I am not related
to any of the parties by blood or marriage, and
that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand.

Ginnette Corr



Ginnette Corr

Declaration of Scott A. Weiss
EXHIBIT: 6

Page 1
August 15, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SAMUEL TUCCIO,

Plaintiff,

-against-

Case No:

CV-12-05506-JFB-GRB

FJC SECURITY SERVICES, INC.,

Defendant.

-----X

DATE: August 15, 2013

TIME: 10:23 a.m

DEPOSITION of the Plaintiff, SAMUEL TUCCIO, taken by the Defendant, pursuant to the Federal Rules of Civil Procedure, held at the U.S. District Court, 225 Cadman Plaza East, Brooklyn, New York 11201, before Scott Torrance, a shorthand reporter and Notary Public of the State of New York.

1 S. TUCCIO

2 ability to remember or -- remember or to
3 comprehend my questions this morning?

4 A. No.

5 Q. Are you on any medication that will
6 impair your ability to testify or remember or
7 understand my questions this morning?

8 A. No.

9 Q. When were you first employed by FJC
10 Security Services?

11 A. Initially, April 20th -- well,
12 April 28, 2009. I believe that was the first
13 day that I came in. I did not begin getting
14 paid until the week of May 26th, 2009.

15 Q. Okay. What was your date of
16 employment with FJC?

17 A. Well --

18 Q. Strike that. I'm going to rephrase
19 that.

20 What was the last day of employment
21 with FJC?

22 A. January 20th, 2010.

23 Q. Were you employed by FJC at any other
24 time, except between those dates?

25 A. No.

1 S. TUGCIO

2 to August 8th, 2009, correct?

3 A. Yes.

4 Q. Okay. So, we're talking about that
5 time period, right?

6 A. Yes, that's correct.

7 Q. During that time period you're listing
8 assignments -- you're listing assignments that
9 were available at that terminal during that
10 time, correct?

11 A. That's correct.

12 Q. Okay. And which terminal was that?

13 A. Terminal 4.

14 Q. What airport?

15 A. John F. Kennedy Airport, in Jamaica.

16 Q. What airline is that, if you know?

17 A. Well, there are different airlines at
18 the airport.

19 Q. Okay.

20 A. There's more than one.

21 Q. It's not just one, okay.

22 During that time period, were you
23 assigned to driving the patrol car?

24 A. Never.

25 Q. You mention Bravo 3. Oh, there's

1 S. TUCCIO

2 A. Yes. And this was only after I had
3 complained to my supervisors that how come I'm
4 always -- I'm never in an inside post.

5 Q. How about Romeo? Is Romeo all by
6 itself or is there a --

7 A. Okay. Well, Romeo, I believe it's
8 kind of a rolling post around the airport.

9 Q. Okay.

10 A. I believe that person, um, goes around
11 and relieves the other guards for lunch and --

12 Q. That's relief?

13 A. It's sort of a relief post, yeah.

14 Q. Did you ever do that?

15 A. I don't -- no, I don't think so, no.

16 Q. If I may, when I say "ever," that's
17 ever during the time period of your employment.

18 A. I do not remember doing that.

19 Q. Okay, Delta 4. Were you ever at Delta
20 4 during that time period?

21 A. Um, I don't remember if I was or not.

22 Q. How about Charley 1?

23 A. Charlie 1? Um, Charlie 1 was inside,
24 um, yes, I was assigned there.

25 Q. How many times were you assigned

1 S. TUCCIO

2 there?

3 A. I would guess three.

4 Q. And when were you assigned there?

5 A. Um, it was sometime in July, probably
6 around the middle of July. Probably the middle
7 of July and the end of my --

8 Q. Just for the record: When you're
9 saying Bravo, Alpha, Romeo, Delta, that's
10 really B3, A3, R, D4? Is that what you're
11 doing?

12 A. Well, no. That's the titles. That's
13 what they called them.

14 Q. Well, Delta is an airline, so, I don't
15 want to confuse the record.

16 A. But that's the title --

17 Q. You don't mean Delta Airline 4, you
18 mean --

19 A. No, no.

20 Q. Okay, Charlie 2. Were you ever
21 assigned to Charlie 2?

22 A. I don't think so.

23 Q. And then --

24 A. Delta 1.

25 Q. -- Delta 1, that was outside?

1 S. TUCCIO

2 A. Yeah. I was there probably during
3 most of June 2009. I was there day after day.
4 I think I was there almost every night the
5 first couple of weeks.

6 Q. Charlie 3?

7 A. Charlie 3, outdoors. I was there a
8 lot of times. That's directing traffic.

9 Q. When you -- I'm sorry. Directing
10 traffic?

11 A. Yeah.

12 Q. Where were you directing traffic?

13 A. Um, outside the airport, Terminal 4,
14 uh, vehicles are allowed to pull up to the
15 airport in front of Terminal 4 and the
16 passengers are supposed to get out and, uh,
17 remove their luggage, you know, and they go
18 into the airplane, they go into the air
19 terminal, and then the automobile is supposed
20 to drive away, and sometimes there are, uh,
21 taxis out there, you know, that will provide
22 the ride to passengers who are leaving the
23 airport. So, the taxis are out in front and
24 the vehicles coming into the airport to leave a
25 passenger or pick up a passenger would come

1 S. TUCCIO
2 there and my job would be to stand outside, you
3 know, wearing a -- a vest that would be colored
4 orange and white with my, uh, hat and uniform
5 on and having a whistle in my hand and blowing
6 the whistle and urging the people to move on
7 and many times they would not move on. They
8 would, uh, answer you back and, um, be very
9 rude doing this and this would be -- the, uh,
10 taxis that would be there, they were -- they
11 were not supposed to be there, but some of them
12 would park there for long periods of time. You
13 would have to tell them to move on or you
14 would, uh, call a tow truck and then they would
15 wait until you're -- you're on your two-way
16 radio and you would ask the tow truck be
17 dispatched to Terminal 4 and then suddenly they
18 would leave.

19 Q. Okay. So, Charlie 3 is the parking --

20 A. Yeah, Charlie 3 -- I believe Charlie 3
21 and Charlie 4 are both -- Charlie 4 is a little
22 different and then I believe it's, uh, you're
23 standing way out in front of Terminal 4 as the
24 cars come in and you direct them. You tell
25 them to move on with your hands.

1 S. TUCCIO

2 Q. How long were you at Charlie 3?

3 A. Um, boy. I was there many times
4 during June and July, too many times. I was
5 there lots of times.

6 Q. Were you given an initial assignment?

7 A. An initial assignment?

8 Q. First assignment after you were
9 processed in personnel.

10 A. Well, that was it, to work at Terminal
11 4 during 11 p.m. to 7 a.m., that shift.

12 Q. So, your initial assignment was
13 Terminal 4?

14 A. That's correct.

15 Q. And it was 11 a.m. to --

16 A. No. 11 p.m.

17 Q. I'm sorry. 11 p.m. to?

18 A. 7 a.m.

19 Q. Got it.

20 Did that time period ever change for
21 the -- from the period June '09 to August '09?

22 A. It was the same hours.

23 Q. Same hours?

24 A. That's correct.

25 Q. What was your initial wage rate?

1 S. TUCCIO

2 A. \$9 per hour.

3 Q. Did that rate ever change?

4 A. No.

5 Q. Did you have any other benefits, to
6 your knowledge?

7 Did you have health insurance?

8 A. No. There's no -- I believe there's
9 no health insurance.

10 Q. Okay.

11 A. No pension, um, there's no personal
12 days, there are no sick days, and unless -- I
13 do not believe there is accrued vacation
14 unless -- it's possible. You would have to ask
15 someone, unless they give you a week's vacation
16 after a year.

17 Q. That's fine.

18 A. That's possible, but I do not know
19 about that right now.

20 Q. In August you were changed to the bag
21 room, correct?

22 A. Okay. In August initially --

23 Q. That's August '09?

24 A. Yeah. Well, the next assignment is --
25 I think I may have mentioned it here, was, um,

1 S. TUCCIO

2 yeah, right here, No. 2. They offered me -- I

3 was called into Building 75 and I spoke to

4 JC -- that's his name. He seems to just prefer

5 his initials. I don't know what the rest of

6 his name is. -- and I was given a form and

7 asked to sign for a assignment at Building 20,

8 6 p.m. to 2 a.m., Monday through Friday.

9 Q. You're referencing paragraph B?

10 A. Yes. In which I was supposed --

11 you're talking about August 2010. If you

12 remember, that was very different --

13 Q. August 2009.

14 A. Uh, 2009. It was very, very hot.

15 There were 90-degree days there as oppose to

16 2013, which is very cool, and I was supposed to

17 walk outside, around Building 20, for that

18 period of time, 6 p.m. to 2 a.m. Well --

19 Q. How long were you doing the

20 walk-around?

21 A. No, that was -- that was the

22 assignment. And I turned it down and I told

23 Mr. JC that I wanted to work part-time about --

24 I think he said 20 to 24 hours a week.

25 Q. Then you were put into the bag room?

1 S. TUCCIO

2 A. Um, then I believe he called me back
3 the next day, said, "I have another assignment
4 for you," and when I went into -- I went back
5 to Room 225 in Building 75, he offered me that
6 job at Avianca Airlines.

7 Q. At the bag room?

8 A. Yes, from, uh, it's about -- it was
9 about four -- I'm not sure of the time. It was
10 about 4 a.m., I think, to 8 a.m. And then,
11 when daylight savings time came into effect, I
12 think it was changed from 5 a.m. to 9 a.m.

13 Q. Did your wage rate change?

14 A. No.

15 Q. Only your hours changed because you
16 asked for part-time, right?

17 A. Yes. But it was, again, a graveyard
18 shift, a nightshift.

19 Q. This is the bag room, right?

20 A. Yes. That's, again, the -- in
21 Building 70 -- in Building -- Terminal 4 -- you
22 know, the airplane terminal is a very big
23 building, but really, attached to the building
24 is another section that is the cargo area,
25 okay, where the -- where cargo is loaded into

1 S. TUCCIO
2 the airplanes and the bag room was in the cargo
3 section of Building 4.

4 Q. Okay. So, the bag room was in the
5 cargo area?

6 A. Yeah.

7 Q. And you accepted that assignment,
8 correct?

9 A. Yes.

10 Q. And you were in the bag room until you
11 were terminated January 20, 2010?

12 A. Yes.

13 Q. At the -- if I remember correctly, at
14 the 4 a.m. to 8 a.m. or 5 a.m. to 9 a.m. --

15 A. Right.

16 Q. -- 24 hours a week?

17 A. Well, uh, five days a week.

18 Q. Five -- I'm sorry.

19 A. Yeah.

20 Q. Five days a week. So --

21 A. I think it actually -- I think it
22 actually started on Tues -- really Tuesday
23 morning. I think it was Tuesday morning.
24 Wednesday morning, Thursday morning, Friday
25 morning. I think the last shift would have

1 S. TUCCIO

2 been really Saturday morning.

3 Q. So --

4 A. It --

5 Q. I'm sorry. Go ahead.

6 A. So, you know, you could think of it as
7 Monday night, but it was really Tuesday through
8 Saturday morning, so, it was four hours a day.
9 Five times four is 20 hours.

10 Q. So, it's not 24, it's 20 hours?

11 A. That's correct.

12 Q. Okay. Let's go off the record for a
13 second.

14 (Whereupon, a discussion was held off
15 the record.)

16 Q. Everything that I have of you, so, I
17 didn't want to kill trees just to give you more
18 paperwork that you already have.

19 A. Right.

20 Q. Okay.

21 MR. WEISS: I want to mark this as
22 Defendant's Exhibit B, which purports to
23 be a copy of Mr. Tuccio's personnel
24 file.

25 (Whereupon, Defendant's Exhibit B, a

1 S. TUCCIO

2 copy of Mr. Tuccio's personnel file, was
3 marked for identification as of this
4 date by the reporter.)

5 Q. Mr. Tuccio, you're going to have lots
6 of opportunity -- I've given you a copy of your
7 personnel file and I'm going to reference a
8 Bates number for that purpose. We're going to
9 go back and forth a little bit, so just bear
10 with me.

11 I'm going to show you Bates No.
12 D000044, dated May 15th -- I'll put it in front
13 of you -- May 15th, '13, 2013. 45 is for the
14 identical copy. So, I just you want to take a
15 look at that page.

16 A. Now, what did you say the date was?
17 May 21st?

18 Q. I believe so.

19 A. Yes.

20 Q. Isn't that your initial assignment?

21 A. Uh, yes, looks like it.

22 Q. And if you look at that, the week, is
23 that your signature at the bottom?

24 A. Yeah.

25 Q. You're referencing the signature on --

1 S. TUCCIO

2 to your left?

3 A. Yeah.

4 Q. And just so the record is clear:

5 There's a calendar in the top of that. Is that

6 the -- is that that shift that you mentioned?

7 You said that --

8 A. Yes.

9 Q. -- your Terminal 4 shift?

10 A. Yes. And it says -- on the date -- it
11 says May 26th, 2009 is the start date.

12 Q. Okay. So, that's your initial
13 assignment?

14 A. Yes, that's correct.

15 Q. Okay. Thank you.

16 That assignment, aside from the
17 walk-around assignment that you mentioned and
18 the bag room, is the assignment you were in
19 from June '09 to August '09, correct?

20 A. Yeah. I think it was August 8th. I
21 believe it was -- August 8th I believe was the
22 last -- I'm sorry. Yeah, I think it was --
23 August 8th was the last day that I worked till
24 this -- August 8th was the last day that I
25 worked that --

1 S. TUCCIO

2 Q. That assignment?

3 A. Yes. And I think I started Avianca, I
4 believe it's August 11th.

5 Q. Let's go back to this. Now, the bag
6 room was inside a building, correct?

7 A. It was inside -- well, I guess you --
8 it's inside cargo, the cargo building.

9 Q. So, inside the cargo building at
10 Terminal 4?

11 A. Yes.

12 Q. Just so the record is clear: And
13 that's where Avianca Airlines is?

14 A. Well, that's where the belts are for
15 the, uh, the luggage comes down there on a belt
16 and, um, the baggage handlers load it from the
17 belt. They pick it up and they put it on these
18 carts with wheels in it, all right? And then
19 there were these big, huge garage doors, I
20 don't know, eight, nine, ten of them, and they
21 go out the garage door and the airplane is
22 right outside the garage doors. It's only a
23 few feet.

24 Q. Got it.

25 A. And that would be an A380 or A3 -- I

1 S. TUCCIO

2 think it was A350 or an A320.

3 Q. So, you're referring to the plane?

4 A. Yes. A 500-passenger plane or a
5 300-passenger plane.

6 Even though the -- the bag room's in
7 the building, don't forget you have these big
8 garage doors that are open all the time, you
9 know? You got the guys who wheel the luggage
10 out to the airplane, empty it into the
11 airplane, come back in with the carts, you
12 know, and the carts usually have like -- it's
13 almost like a forklift that's attached to the
14 carts. It's a motorized -- it's -- it's a
15 motorized -- it's like a motorized forklift,
16 except it's -- it doesn't -- you know, it
17 doesn't lift pallets, it just -- it's attached
18 to the carts, maybe two or three of them at a
19 time, and it wheels them out into the tarmac.

20 Q. So, you were -- you maintained the
21 post in the bag room from August until your
22 termination on January 2010, correct?

23 A. That's correct.

24 Q. And it didn't change at any time
25 during that time?

1 S. TUCCIO

2 A. My assignment was just that one, the
3 bag room. That was the original assignment
4 given to me. When I signed in the timesheets,
5 to the left of the column it would have bag
6 room.

7 Q. Let's go back. Let's get back to the
8 earlier time period.

9 So, did you observe -- were there
10 other -- you referenced Justin Avery and I just
11 want to keep this organized. Did Justin Avery
12 work in the bag room?

13 A. Uh, no.

14 Q. Okay.

15 A. Well, I never saw him in the bag room.
16 Now, whether -- he may have worked there
17 another time. As far as -- I never saw him.
18 He did not work with me. So, I don't know if
19 he was ever assigned there during another
20 period of time. I don't know anything about
21 that.

22 Q. Did Lowel Caraballo work with you?

23 A. In the bag room? No.

24 Q. Did Justin Avery ever work with you in
25 the earlier period --

1 S. TUCCIO

2 A. Yes, at Terminal 4. He began the same
3 time I did.

4 Q. Did you ever observe Mr. Avery inside
5 the terminal?

6 A. Yes.

7 Q. Did you ever observe him posted inside
8 the terminal?

9 A. Yes.

10 Q. So, just to focus it in a latter
11 period after August: He didn't work in the bag
12 room with you?

13 A. I never saw him in the bag room.

14 Q. Okay. But in the earlier period, you
15 did -- you observed him inside -- posted
16 inside?

17 A. Inside and outside he would be, uh,
18 assigned to Charlie 1 or sometimes there's a
19 post inside the, uh, inside the building. I
20 believe it's called Charlie 3 --

21 Q. And this is a Caucasian gentleman?

22 A. -- or Charlie 2.

23 Q. Charlie 2.

24 This is a Caucasian gentleman?

25 A. Yes.

1 S. TUCCIO

2 Well, I should say -- I should say
3 Charlie 1. That would be in the lobby of, um,
4 Terminal 4. There's a front lobby nearest the
5 driveway. When the people come in to get into
6 the terminal, there's a main front door.

7 Q. And that's where you've seen Mr. Avery
8 posted?

9 A. Yeah, he would be there, and I believe
10 I also saw -- he was also on, um, I should
11 say --

12 Q. You changed --

13 A. Charlie -- Charlie 3 or something
14 would be the outdoor post. He was also in
15 Charlie 3.

16 Q. You changed the digits a couple of
17 times.

18 A. Yeah.

19 Q. So, he's at Charlie 1 and Charlie 3?

20 A. And Charlie 3, yes.

21 Q. And Charlie 1 was the lobby?

22 A. Yes.

23 Q. That's inside?

24 A. Yes. And Charlie 3 would be outdoors.

25 Q. Outdoors.

1 S. TUCCIO

2 And he's a white gentleman?

3 A. Yes.

4 Q. Did you ever observe, during the
5 earlier period, before August, when you were at
6 Terminal 4, people -- guards of color posted
7 outside?

8 A. Yes.

9 Q. Do you understand what I mean by
10 "people of color"?

11 A. Excuse me?

12 Q. Do you understand what I mean by
13 "people of color"?

14 A. Yes. Black skin color.

15 Q. African-American?

16 A. Well, a person of black skin. I don't
17 know if they were African-Americans. They
18 could be Jamaican or Dominican or Haitian.

19 Q. Did you ever observe Hispanic guards
20 posted outside? Or Hispanic descent I think is
21 the --

22 A. Yes, people appeared to be Hispanic
23 sometimes on -- well, I should say not so much
24 on my shift. I should backtrack a bit.

25 Q. That's all right, sir. I'll --

1 S. TUCCIO

2 during the few weeks that I saw him there.

3 Q. Did you ever observe African-Americans
4 directing traffic out in front of Terminal 4?

5 A. Yes.

6 Q. Did you ever observe Hispanic, I mean
7 guards? Just so we're clear, guards.

8 A. Uh, I do not know if there were
9 Hispanic people there. I'm only talking about
10 my shift now, 11 to 7.

11 Q. All right.

12 A. I'm not aware of -- there was a, uh,
13 the man who was a supervisor of that post,
14 outdoor post, Charlie 3, was a white man. I
15 don't remember what his name was.

16 Q. You're talking about the tour
17 supervisor?

18 A. Um, yeah, like a tour supervisor,
19 yeah.

20 Q. And was he the tour supervisor for the
21 entire period that you were there?

22 A. No. There would be another man,
23 another tour supervisor that would be also --

24 Q. And you don't recall the name of the
25 tour supervisor who was there? Not the one --

1 S. TUCCIO

2 Q. Or is this something that -- let me
3 finish.

4 This is something that you were
5 standing there while someone was telling her to
6 do this?

7 A. Okay. Let me backtrack --

8 Q. Sir, just please answer the question I
9 asked you, please.

10 A. Okay. She worked -- she would be --
11 she would be outside guarding the airplane and
12 sometimes she -- when the supervisor would come
13 back by Mr. Cabalaro (phonetic), Alberto, um,
14 she would ask him, you know.

15 Q. You mean Alberto Cabanilla?

16 A. When I checked the sign-in --

17 Q. Slow down.

18 A. I --

19 Q. Slow down. Just take a breath.

20 A. Okay.

21 Q. Are you referring to Alberto
22 Cabanilla?

23 A. Cabanella (phonetic).

24 Q. I don't think that's his name, but
25 okay.

1 S. TUCCIO

2 Is that the tour supervisor that
3 you --

4 A. He's the supervisor, yes.

5 Q. Now, were you present when the tour
6 supervisor -- this tour supervisor sent her to
7 the tarmac? Did you hear that?

8 A. Okay. Um --

9 Q. Are you thinking about it?

10 A. Okay. You're asking me if I heard him
11 send her out there? Um, no, I guess I was not
12 present when she -- I saw her out on the
13 tarmac. Maybe that's the correct --

14 Q. So, you observed her on the tarmac?

15 A. Yes, standing beside the airplane.

16 Q. As you sit here today, you don't know
17 the circumstances how she ended up on the
18 tarmac, you just observed her there?

19 A. That's correct. But I checked those
20 sign-in sheets, you know, and she would be
21 assigned in the sign-in sheets to the bag room,
22 all right? But the same thing happened to me.
23 I would be assigned to the bag room, but you
24 would be taken -- but we would be, uh, outside
25 in the, uh, on the tarmac.

1 S. TUCCIO

2 That's inside, right?

3 A. Yes.

4 Q. And this is a white woman?

5 A. Yes.

6 Q. By the way, for the record, the
7 complaint references Supervisor Alberto
8 Cabanilla. I don't know how that's pronounced?
9 That's C-a-b-a-n-i-l-l-a, according to the
10 complaint. Is that the tour supervisor you
11 were referring to?

12 A. That's correct.

13 Q. Going back to the post. During this
14 time period of June '09 to August '09, did you
15 observe African-American guards driving the
16 patrol car?

17 A. Did I observe, um, African-American
18 you're saying. Well, the two people -- there
19 was a man, I think, named Sungay, S-u-n-g-a-y,
20 was the first name, and I -- I forgot his last
21 name, but it's on those sheets you gave me
22 yesterday. I believe he drove it and I
23 believe --

24 Q. He was Afro-American?

25 A. He's not Afro-American, but, um --

1 S. TUCCIO

2 Q. Dark skin?

3 A. I guess dark skin.

4 Q. A person of color?

5 A. Yeah. Well, I guess you'd call that,
6 but --

7 Q. Did you observe --

8 A. Yeah.

9 Q. Go ahead.

10 A. Yeah.

11 Q. Go ahead.

12 A. I think he was there, I think, most of
13 the time.

14 Q. Did you observe Hispanics driving the
15 patrol car during that time period?

16 A. I, uh, I -- you know, the patrol car,
17 the rover, you know, I would -- it would be out
18 on the tarmac, you know. I would be inside
19 doing my job, so, I was not able to see who was
20 driving the rover. It would be out all over
21 the airport, you know, patrolling the airport
22 where I would not be able to see who the driver
23 was.

24 Q. Did you observe Afro-Americans at
25 Bravo 3?

1 S. TUCCIO

2 A. Yes.

3 Q. Same question. Did you observe
4 Hispanics at Bravo 3?

5 A. Uh, I do not know if they were
6 Hispanic or not.

7 Q. Did you observe Afro-Americans at
8 Alpha 3?

9 A. Yes.

10 Q. Did you observe Caucasian employees at
11 Bravo 3, aside from yourself?

12 A. Um, I can't say at this point. I
13 don't remember.

14 Q. Did you observe Caucasian employees at
15 Alpha 3?

16 A. Uh, yes.

17 Q. I don't know if I asked you this
18 question. If I did, I apologize.

19 Afro-Americans at Alpha 3?

20 A. Well, let me put it this way.

21 Q. People of color.

22 A. I --

23 Q. People of color.

24 A. I don't know if they were
25 Afro-American, but black skinned people.

1 S. TUCCIO

2 Q. People of color?

3 A. People with black skin.

4 Q. Did you observe -- I may have asked
5 you this question -- any Hispanics at Alpha 3?

6 A. I don't know if anybody was Hispanic,
7 I do not know.

8 Now, let me just point out something
9 that I -- you know, every single day I am not
10 able to see who was on these posts.

11 Q. I understand. Let me ask you this
12 question. How did you get -- during this time
13 period, how did you get to work in the morning?

14 A. Okay. Um, I would take the Long
15 Island Railroad from Hicksville railroad
16 station --

17 Q. Okay.

18 A. -- to Jamaica and then from there
19 there is the air train that takes you to JFK
20 Airport.

21 Q. When you walked to your post, your
22 initial post off of the bag room, when you
23 walked to the post, were you able to observe
24 every day these posts as you went past them?

25 A. I was not able to observe them every

1 S. TUCCIO

2 A. Um --

3 Q. Where is Delta 4? I know it's at the
4 airport, but where is Delta 4?

5 A. I believe that's inside, on the second
6 floor of the terminal of Terminal 4.

7 Q. Did you see a white guard at Delta 4?

8 A. Um, probably, probably.

9 Q. Did you see a person of color guard at
10 Delta 4?

11 A. Yes.

12 Q. I'm going to put -- how about
13 Hispanic? Did you see a Hispanic guard --

14 A. I don't know if -- I don't know if
15 there were Hispanic people assigned there.

16 Q. How about Delta -- how about Charlie
17 1? Did you see a white guard at Charlie 1?

18 A. Yes.

19 Q. Did you see a person of color guard at
20 Charlie 1?

21 A. Yes.

22 Q. Did you see Hispanic at Charlie 1?

23 A. I don't know if it was Hispanic, they
24 were Hispanic or not.

25 Q. Okay. Did you see a person of color

1 S. TUCCIO
2 at Delta 1, guard?
3 A. Did -- repeat the question.
4 Q. I'll withdraw that.
5 That was your assignment, correct?
6 A. Yes.
7 Q. Delta 1, Charlie 3 and Charlie 4,
8 that's you?
9 A. Yeah.
10 Q. Got it. Okay.
11 You don't know the circumstances of
12 these other guards at these other posts
13 starting at Bravo 3 to Charlie 2 and 1 and
14 Delta 4, Romeo and Alpha 3, do you?
15 A. What do you mean by circumstances?
16 Q. Their assignments, why they've been
17 posted there. You don't know that, do you?
18 You're basing your representation -- your
19 allegations on what you're observing? You
20 don't know the circumstances, correct?
21 A. Uh, well --
22 Q. Yes or no, sir?
23 A. I would say yes, I did know the
24 circumstances of some people.
25 Q. But you don't know why they were

1 S. TUCCIO

2 observed, right?

3 A. That's correct.

4 Q. There's nothing else, other than what
5 you've observed, correct?

6 A. Uh, and also I went through the
7 sign-in sheets yesterday and, um, I noticed on
8 the sign-in sheets that there were two
9 employees that I noticed that, um, were black
10 employees.

11 Q. How do you know they were black?

12 A. Oh, because I worked with them.

13 Q. Which employees are you talking about?

14 A. One of their names was Stevenson. I
15 name him somewhere in the complaint.

16 Q. We'll get there.

17 A. And the other one was Jason something
18 or other.

19 Q. Jason Parkinson?

20 A. Parkinson, yes.

21 Q. And you say he's a black employee?

22 A. Yes, black skin, absolutely.

23 Q. He's a person of color?

24 A. Yes.

25 Q. And where did you observe him posted?

1 S. TUCCIO

2 A. Okay. In the, um, all right. In the
3 list that you gave me for Avianca Airlines --
4 well, I was assigned to the bag room, he would
5 be assigned to indoor posts all the time, and
6 the same thing with the other guy Stevenson.
7 They were not regular employees, they were
8 people who would come on there to get overtime
9 assignments and they would be -- they were
10 there lots of times.

11 Q. Your job did not include the
12 assignments of other guards, did it?

13 A. No. You asked me if I observed
14 black -- people of color working --

15 Q. And you had answered that question.

16 A. That's my answer.

17 Q. You answered that --

18 A. Yes.

19 Q. -- question.

20 But you don't know the circumstances
21 of the assignment of Mr. Parkinson or, I guess,
22 Stevenson? I think I know who you mean. You
23 don't know what the -- you don't know why they
24 were posted where they were posted, do you?

25 A. Um, no.

1 S. TUCCIO

2 Q. You're not inside personnel -- inside
3 the personnel department making the
4 assignments, so you don't know, correct? It's
5 not part of your job duties?

6 A. That's -- that's true.

7 Q. Okay. Let's move on a little bit.

8 In the bag room, after August --

9 A. Now wait. Let me just go back and
10 answer that question a little fully.

11 You said I don't know, but I did
12 mention, as I said in my complaint, many times
13 to Alberto Cabanilla. I asked him to put me on
14 an indoor assignment and he would say, "I can't
15 do it. My hands are tied. You've been
16 assigned by the personnel department to the bag
17 room. I can't take you out."

18 Q. The bag room's inside, in the cargo
19 building?

20 A. Yeah.

21 Q. Okay.

22 A. The other supervisors at, um, Terminal
23 4, I also asked them, you know, you're always
24 putting me out in traffic day after day,
25 outside. I'm always in Charlie 3 or Charlie 4.

1 S. TUCCIO

2 class?

3 A. That's the training class that was
4 given by, um, the instructor.

5 Q. Well, let me try it this way. What
6 did they train you -- what was the training
7 for?

8 A. This was a training that -- that was
9 on, uh, being an airport agent, given by Efrain
10 D. Santiago, Efrain D. Santiago. It was a
11 training class in Building 75 for five days and
12 it was --

13 Q. Let me ask you a question so he could
14 get it into the record.

15 This was a training class for being an
16 agent at the airport, is what you said?

17 A. An airport agent.

18 Q. Go ahead, go ahead.

19 A. Given by Efrain D. Santiago, at the
20 Building 75. There's a classroom right next to
21 Room 225 and it's big enough for about 30
22 employees. It's got desks and chairs and
23 Mr. Santiago was at the blackboard at the front
24 of the building. And also, Mr. Avery was in
25 another class I took inside Room 228. There's

1 S. TUCCIO

2 a small training class. If you remember, I
3 sent you a map of the office and right behind
4 the dispatchers --

5 Q. Well, we talked about the location.

6 A. Okay. Yeah. Okay. There was a
7 training class for driving a vehicle on the
8 tarmac and that results in a lettering on your
9 badge that says DV1, which means you are
10 authorized to drive a vehicle on the tarmac,
11 and then there's also -- it says EV, which
12 means you're authorized to escort up to two
13 vehicles on the tarmac. That's on my badge.

14 Q. Mr. Tuccio, just so we can get a
15 clarification, this is in Defendant's Exhibit
16 B --

17 A. Yes.

18 Q. -- from your personnel file?

19 A. Yes.

20 Q. Just for purposes of clarification,
21 that exhibit doesn't -- Exhibit 2 is not part
22 of this personnel file, that's just a reference
23 to something else --

24 A. Yes.

25 Q. -- that I've already given you. This

1 S. TUCCIO
2 is Bates No. -- I can't make it out. It looks
3 like 66, I think.
4 A. Yeah.
5 Q. Because it got obliterated. It looks
6 like a certificate of attendance --
7 A. Yes.
8 Q. -- by The Port Authority of New York
9 and New Jersey.
10 A. Yes.
11 Q. Is that for you? It's got your name
12 on it?
13 A. Yes.
14 Q. Is that the class that you're
15 referencing?
16 A. Well, I'm referencing, you know, the
17 class that was given by Mr. Efrain D. Santiago
18 and this other class. Mr. Avery was in that
19 also.
20 Q. Well --
21 A. In other words, he was in the same
22 class as I was in during the month of May of
23 2009. In other words, they hire a group of 25
24 employees and they train us at the same time.
25 We all go through the same training --

1 S. TUCCIO

2 Q. Okay.

3 A. -- for four weeks.

4 Q. There are a couple of certificates in
5 your personnel --

6 A. Yes.

7 Q. There's this one which is referenced
8 as a security identification display area
9 training --

10 A. Yes.

11 Q. -- which I've been told at times is
12 referred to as SIDA training, and it's run by
13 The Port Authority?

14 A. Yes.

15 Q. Did you attend that?

16 A. Yes.

17 Q. Okay. Is that the training that
18 you're referencing -- there may be others, but
19 is that the training class you're referencing?

20 A. Um, well, the class would be the
21 group -- the whole group of people who went
22 through this training over a three, four-week
23 period. I'm talking about that -- the group of
24 us. We all did the same thing, that class.

25 Q. Well, there's another certificate.

1 S. TUCCIO

2 A. Okay.

3 Q. Hold on.

4 A. So, it's really -- we went to several
5 classes, but I mean, the group of 25 employees
6 who went through the training in May of 2009,
7 I'm talking about that. We were altogether,
8 that class. We were all told at the end of the
9 training, at the end of May, we would, you
10 know, then be given different assignments.

11 Q. Okay.

12 A. But we were all -- we were all, like,
13 hired at about the same time and we all went
14 together through the same classes for three or
15 four weeks.

16 Q. Okay.

17 A. That's what I meant by "class."

18 Q. Let's go off for a minute.

19 (Whereupon, a discussion was held off
20 the record.)

21 Q. So, Defendant's Exhibit B, Bates No.
22 D00026, do you recognize that document?

23 A. Yes.

24 Q. And that's a security guard training
25 certificate issued to you?

1 S. TUCCIO

2 A. Uh, annually I get one every year,
3 yes.

4 Q. And that's for your security guard
5 license?

6 A. That's correct.

7 Q. Okay. So, you had that as a
8 qualification of the job at FJC before you
9 walked in the door?

10 A. Yes.

11 Q. Okay. Then this is D00027. This is a
12 security guard training certificate, 16 hours.
13 Do you recognize that?

14 A. Yes.

15 Q. And that's issued to you, right?

16 A. Yes.

17 Q. And what is that?

18 A. Well, in order to work as a security
19 guard you have to have a, uh, 16-hour training
20 course initially, and then every year you are
21 required to undergo an annual eight-hour
22 training.

23 Q. So, that's part of your licensing,
24 regardless of where you work, right?

25 A. That's correct.

1 S. TUCCIO

2 Q. And then the certificate of attendance
3 that I referred to as the SIDA training --

4 A. Yes.

5 Q. -- that's a four-hour course, correct?
6 That's issued to you, right?

7 A. Yeah. I don't know if it's four
8 hours, but yeah.

9 Q. Well, how long were you in the room
10 with The Port Authority?

11 A. It was probably about four hours.

12 Q. Four, okay.

13 And you said there's a training that
14 FJC provided to you?

15 A. Uh, yes. Five days of training, I
16 believe.

17 Q. Was it before the -- before this
18 training that's the SIDA training?

19 A. No, I believe it was afterward. I
20 believe it's the third week of, um, May I wrote
21 the dates of that. See, I started working on
22 the 26th and I believe it was on the Friday
23 before that. It was on a Friday and then we
24 came back, Monday, Tuesday, Wednesday.

25 Q. And that's guard training that FJC

1 S. TUCCIO

2 provided to you?

3 A. Yeah, yeah.

4 Q. So, the training class that you're
5 referencing with Justin Avery, is that training
6 class?

7 A. Well, yes. And then on, I believe,
8 the Thursday before I started working I was
9 trained at, um, Delta Airlines, on the use of,
10 um, equipment that would be able to detect, um,
11 different kinds of, uh, bomb residues, you
12 know, such as TNT and other chemicals.

13 Q. Thursday before --

14 A. It's called the cargo -- cargo
15 screening, where they screen some of the
16 luggage to see if the -- there -- there might
17 be any residues from, uh, some kind of a bomb
18 in it. So, that was on the Thursday before
19 that and Mr. Avery -- the group of us, in the
20 group of -- I think it's 25 or 30 people, we
21 all underwent the same training.

22 Q. So, the Thursday before May 26th, '09,
23 that was --

24 A. Yes.

25 Q. -- bomb detection?

1 S. TUCCIO

2 A. I believe that was a Thursday.

3 Q. And the third week before May 26th or
4 thereabouts?

5 A. Yeah.

6 Q. You said the third week of May, Friday
7 before that, was the five-day training with
8 FJC?

9 A. Yes.

10 Q. And that's the training course that
11 you're referencing with Justin Avery?

12 A. Yes.

13 Q. And that's the training course that
14 you're referencing to Efrain Santiago?

15 A. Yes. It may have been four days. I
16 think it started on a Friday. It was Monday,
17 Tuesday, Wednesday, so, maybe it was four days
18 rather than five days, and on Thursday was the
19 training on the, uh, cargo, uh, screening
20 training, and that's an all-day course. And
21 Mr. Efrain Santiago was in attendance on the
22 Thursday. He sat in the back of the room and
23 then he helped administer the test at the end
24 of the day. He handed out the sheets and
25 collected the tests and he was the one who

1 S. TUCCIO

2 graded them.

3 Q. How do you know that?

4 A. Oh. Well, I -- he -- well, he told --
5 he told us he was grading them. The other man
6 taught the course, but he was in charge of the
7 testing and grading.

8 Q. Is Mr. Santiago's of a Hispanic
9 descent?

10 A. I believe so.

11 Q. What grade did you get?

12 A. I do not -- you're talking about
13 the --

14 Q. Mr. Santiago's graded test.

15 A. Which one?

16 Q. The four-day training from FJC.

17 A. I believe the grades -- I -- I would
18 have to guess. It was probably about --

19 Q. Were you given -- let's back up a
20 minute.

21 A. They --

22 Q. Were you given a grade?

23 A. He did tell us what the score was
24 after he graded it and I -- you know, I believe
25 it was about 93.

1 S. TUCCIO

2 Q. So, if I understand your testimony
3 correctly, you had the guard certificate which
4 you had for your licensing?

5 A. Yes. It was 93, uh, guard -- fire
6 guard certification.

7 Q. Wait a minute. The fire -- there
8 wasn't a question. Let me -- let's not get
9 this confused.

10 A. Okay.

11 Q. Let's back up for a minute.

12 A. Okay. Sorry.

13 Q. I'll get to the fire guard
14 certification in a minute.

15 A. Okay.

16 Q. So, there was guard certification
17 which --

18 A. Right.

19 Q. Let me finish. -- guard certification
20 which you do for your licensing, correct?

21 A. Yes.

22 Q. That's the certificate that I showed
23 you that was D25 or whatever that was. That
24 was the --

25 A. Eight-hour and 16-hour course.

1 S. TUCCIO

2 Q. The eight-hour and 16-hour courses?

3 A. Yes.

4 Q. Then there's the four-day course that
5 was conducted by Efrain Santiago --

6 A. Yes.

7 Q. -- who administered the test and told
8 everybody they were -- he was administering the
9 test, correct? I mean, he was going to score
10 the test?

11 A. Well -- okay. He tested us on the
12 four-day course, and then on Thursday we came
13 back for cargo screening, we were given another
14 test.

15 Q. Right.

16 A. And that I do not know what the score
17 I got was.

18 Q. Okay.

19 A. He -- at the end of the day, you know,
20 at 5 o'clock he just, uh, wanted to go home and
21 he did not grade them.

22 Q. And then you had the SIDA training,
23 which I mentioned to you --

24 A. Yeah.

25 Q. -- from The Port Authority?

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S. TUCCIO

If I understand your testimony, it
wasn't concurrent with the four-day training
at --

A. No.

Q. -- FJC?

A. No, it wasn't. It was on a different
day.

Q. And then you were trained on driving a
vehicle?

A. Yes.

Q. And you were trained on escorting?

A. Yeah, um, well, yeah, that's part of
driving the vehicle, yes.

Q. Well, you mentioned the DV --

A. Yeah, DV --

Q. -- on the --

A. Yeah. And that could be EV.

Now, I don't have -- I did not have
EP. EP means you can escort up to five people,
but that was not on my badge. I think the, uh,
policemen -- Port Authority policemen have EP
on their bandages, but that was not on my
badge.

Q. Okay. So, that's all the training you

1 S. TUCCIO

2 received, correct?

3 A. I think there was more, uh, let me
4 see.

5 Q. Well, that was all the --

6 A. I think there was one more class.
7 There was one more class given, uh, by, uh,
8 somebody at the airport. There was a Port
9 Authority training. And there was another
10 class given by, I think, something like JFK
11 Airport or some part of JFK, but there was
12 another day's training. It was a half a day, I
13 believe.

14 Q. Well, isn't The Port Authority
15 training, half day, just the SIDA training?

16 A. Yeah, but I believe there was another
17 one too. I believe there was another
18 certificate somewhere. I'm pretty sure I did
19 get another one.

20 Q. I'm pretty sure there's only three in
21 there, so . . .

22 A. Okay. Well, if you want, when I get
23 home, I could provided you with it, with the
24 other one.

25 Q. Okay.

1 S. TUCCIO

2 A. I have -- probably, if you looked --
3 well, let me see. I looked through my personal
4 records. I believe I have the -- the other
5 one. I'm surprised it's not in the . . .

6 Q. Well, I might already have it and I'm
7 just misremembering it.

8 A. See, there would be two other -- yeah,
9 two other certificates --

10 Q. From The Port Authority?

11 A. -- like that.

12 I don't think they came -- I don't --
13 one came from The Port Authority. I think
14 another one came from somebody else at the
15 airport. But I'm pretty sure there are three,
16 three different -- three ones that look like
17 this, you know, almost like a diploma that
18 you're handed.

19 Q. Does it have the word "Port Authority"
20 on it?

21 A. Um, I don't -- I don't think the other
22 ones have the words Port Authority on it, but
23 it does say that I completed the training
24 class. There's my name, the date and I think
25 somebody signed them.

1 S. TUCCIO
2 International Union and that they would be
3 taking out fees. They took out fees. There
4 was an initial fee for membership. I think it
5 was \$40. And I believe \$40 a month was taken
6 out of my paycheck.
7 Q. Let's go off the record for a moment.
8 (Whereupon, a discussion was held off
9 the record.)
10 Q. Let me show on Defendant's Exhibit B,
11 Bates No. D444419. You checked marked here
12 that you received the -- I can't do it upside
13 down. The FJC sexual harassment,
14 anti-discrimination form that you signed, do
15 you recall doing that?
16 A. Yes.
17 Q. And I believe you also got the terms
18 and conditions of employment. Do you recall
19 signing a document that said that as well?
20 A. Um, yes.
21 Q. In fact, that was an exhibit to a
22 letter that I submitted, that you get a copy of
23 yesterday in response to your objection for
24 De Novo review to Judge Bianco as one of the
25 exhibits. Do you remember seeing that

1 S. TUCCIO
2 yesterday?
3 A. Yes.
4 Q. It was called terms and conditions of
5 employment.
6 A. Yup.
7 Q. And that was your signature at the
8 bottom of that?
9 A. Yes.
10 Q. Mr. Tuccio, I'm going to show you
11 what's been marked as Defendant's Exhibit B.
12 It's Bates No. D as in David 000051. Do you
13 recognize that document? It's entitled, for
14 purposes of the record, FJC Security Services
15 Employee Statement.
16 A. Well, let me read it just to make sure
17 that's it entered into the deposition.
18 Q. No, it doesn't need to be entered.
19 Just read it to yourself. I don't want to
20 burden the record. The transcript's expensive
21 enough.
22 A. Okay. You have highlighted --
23 Q. It was highlighted --
24 A. -- to extreme weather conditions for
25 an entire shift.

1 S. TUCCIO

2 Q. Right.

3 A. That's what you have highlighted.

4 Q. Yes. That's not part of the document.
5 That's something my paralegal did.

6 A. Okay.

7 Q. So, disregard the highlighting.

8 A. But that's what it says in it.

9 Q. Is that your signature at the bottom
10 of there?

11 A. Yes.

12 Q. So, you read, understood and signed
13 that document at that time?

14 A. Yes.

15 Q. Okay. I show you under Defendant's
16 Exhibit Bates No. D000066, entitled FJC
17 Security Services Inc. Aviation, open quote, No
18 Restrictions, close quote, Form. Could you
19 please take a look at that?

20 MR. WEISS: Let the record reflect
21 that the witness is reviewing that
22 document.

23 A. Okay. I just want to comment that --

24 Q. Do you recognize that -- I'll let you
25 respond, but do you recognize the document?

1 S. TUCCIO

2 A. Yes.

3 Q. Did you read and understand the
4 document?

5 A. Yes.

6 Q. And is that your signature at the
7 bottom?

8 A. Yes. It asks me what requirements or
9 restriction that I have to put them in the
10 place below and I put down I want to get Sunday
11 off and Saturday off, if possible.

12 Q. Okay. Well, it's in the document,
13 right?

14 A. Yes.

15 Q. Okay. Okay.

16 A. Now, it also gives me a chance below
17 that if there are no restrictions to your days
18 off, shift for hours, I could put down I have
19 no restrictions in the space below, which I did.
20 not do.

21 Q. Okay. That's in the document. The
22 document speaks for itself. Let's talk about
23 these two individuals.

24 This morning, Mr. Tuccio, you handed
25 me a letter referencing --

1 S. TUCCIO

2 MR. WEISS: Why don't we do this:

3 Let's mark this as an exhibit for him.

4 (Whereupon, Defendant's Exhibit C,
5 letter, was marked for identification as
6 of this date by the reporter.)

7 Q. It is now 12:05. We've been going
8 from approximately 10:12, 10:15. I suspect the
9 court reporter's going to want lunch, I suspect
10 we're going to want a little something to eat
11 as well. Do you want me to go another hour?
12 Would you like to go for another hour, another
13 half hour --

14 A. Another hour. 1 o'clock would be
15 good.

16 Q. You're okay with -- until 1 o'clock?

17 A. (Witness nodding.)

18 MR. WEISS: Off the record.

19 (Whereupon, a discussion was held off
20 the record.)

21 Q. This morning, Mr. Tuccio, you handed
22 me what purports to be a letter addressed to
23 me, which I've marked as Defendant's Exhibit C.

24 A. Yes.

25 Q. Disregard -- I marked it with my pen.

1 S. TUCCIO

2 That was inadvertent. But is that the letter
3 that you provided to me today?

4 A. Yes.

5 Q. Let's talk about Ms. Sonnia,
6 S-o-n-n-i-a, Alvarado --

7 A. Yes.

8 Q. Let me finish the name. --
9 A-l-v-a-r-d-o.

10 A. Yes.

11 Q. You reference her as a black woman,
12 name unknown, who regularly worked as an FJC
13 security guard on the morning, 4 a.m., hyphen,
14 8 a.m. or 5 a.m., hyphen, 9 a.m., at --

15 A. Yes.

16 Q. -- Avianca Airlines in Terminal 4 from
17 about August 11, 2009 to January 20, 2009.
18 First of all, let me ask you: Is this an
19 individual that worked along side your shift
20 during that time?

21 A. Okay. Let me just go down to the
22 name. Um, sometimes on the sign-in sheet she
23 signed her name S-o-n-i-a, but most of the time
24 it was spelled like this (indicating). My word
25 processor tells me Sonia is usually spelled

1 S. TUCCIO

2 Avianca Airlines, that's all.

3 Q. Oh, never mind. That was -- that was
4 Gloria Noel. Never mind.

5 A. Yes.

6 Q. Okay.

7 A. And according to your sign-in sheets,
8 she was there regularly, you know, day after
9 day after day, and she was not one of the
10 regulars that I named in my complaint.

11 Q. So, you don't know if she's Hispanic
12 or a person of color?

13 A. I don't know. Well, a black person --
14 I mean, she had black skin, that's all, okay?
15 She's a tall black woman who worked there every
16 day regularly and she worked on the inside
17 assignments all the time.

18 Q. I think the politically correct
19 statement for Hispanic is Hispanic -- of
20 Hispanic descent, but it's --

21 A. I do not know, okay? I just . . .

22 Q. Ms. Gloria Noel --

23 A. Yes.

24 Q. -- you never met Gloria Noel or --
25 strike that.

1 S. TUCCIO

2 A. Yes.

3 Q. Okay. You list a Mr. John Abraham?

4 A. Yes.

5 Q. First of all, is he a person of color?

6 A. John Abraham?

7 Q. Yes.

8 A. No.

9 Q. He's a Caucasian man?

10 A. Yes.

11 Q. And what is it do you believe he
12 knows?

13 A. Um, John Abraham was one of the, uh,
14 supervisors at Terminal 4 in June of 2009 and
15 I -- he was terminated during, I think, July of
16 2009, and I believe that he was terminated
17 because --

18 Q. Were you involved in the termination?

19 A. No.

20 Q. Are you giving me a supposition?

21 A. I'm just giving you --

22 Q. I don't want to know what you believe.
23 What you believe is not really of relevance to
24 Mr. Abraham or this case. I just want to know
25 what, if anything -- why do you list him as

1 S. TUCCIO

2 being discriminated against by Alberto
3 Cabanilla, and the thing is, they have in their
4 handbook, the employee handbook that they give
5 us, and they tell us that if you want to make a
6 complaint, you were supposed to do it step by
7 step. You go to your immediate supervisor and
8 make a complaint, and if he does not
9 satisfactory take care of your complaint, the
10 next thing you do is you go to the supervisor
11 of the building. In this case it was
12 Building -- Terminal 4. And then, if you
13 weren't satisfied, the next step is, you would
14 go to the general manager, Mr. James Donohue,
15 and bring the complaint to him, or at the same
16 time you could also during this period, uh, go
17 right to the union rep and talk to Mr., uh, I
18 believe it's Al Dooley.

19 Q. The --

20 A. Those are the procedures.

21 Q. Okay. Let's focus on Mr. Abraham for
22 a minute.

23 A. Now, if you do not go through the
24 procedures, if you try to jump ahead and go to
25 headquarters, you will be terminated for that.

1 S. TUCCIO

2 Q. Did you make a complaint to
3 Mr. Abraham?

4 A. Well, I complained to him that, you
5 know, I was wondering why I was always put on
6 traffic and other people who had just been new
7 hires were being put on a nice indoor
8 assignment and, uh, I thought there was -- that
9 I would be moving out of the traffic into
10 indoors and that these new employees would be
11 put on traffic and I didn't feel it was very
12 fair and I had been patient, you know? I
13 worked there all of June and it was July and --

14 Q. And was --

15 A. You know --

16 Q. Go ahead.

17 A. -- I felt that, you know, I wanted --
18 I wanted to move in an indoor assignment
19 because traffic is very, very hard. You're out
20 there in front of the building. Sometimes it's
21 raining, it's very cold, you, uh, have to
22 interface with these, uh, people that have to
23 move their car and some of them will answer you
24 back, give you a lot of argument and you have
25 to blow the whistle and, you know, do you see

1 S. TUCCIO

2 the way I talk?

3 Q. I understand.

4 A. I had to holler at the top of my lungs
5 sometimes to get people to move their car, to
6 ask the taxi drivers -- tell them, you've been
7 there too long. You have to move it, otherwise
8 we will have it towed.

9 Q. Did Mr. Abraham give you assignments?

10 A. He gave assignments, yes.

11 Q. Did he give you assignments to
12 traffic?

13 A. Yes.

14 Q. And he's a white man?

15 A. Yes.

16 Q. Okay. Let's go on to the next one.

17 A. But I felt that the reason why it was
18 explained to me that if you go -- if you do not
19 go through the step-by-step procedure, going to
20 one supervisor and then the next step to the
21 next higher one and the next step the next
22 higher one, if you try to jump ahead and go
23 right to the top, I mean go to headquarters,
24 you could get fired for that, and allegedly he
25 was fired for doing that.

1 S. TUCCIO

2 Q. You don't know that?

3 A. Well, no. But that's what I was told,
4 okay?

5 Q. That's what you were told?

6 A. Yes.

7 Q. Who told you?

8 A. Well, all the employees were talking
9 about it. He was -- that he --

10 Q. What employees?

11 A. The other employees that I worked
12 with.

13 Q. What other employees?

14 A. The -- I don't --

15 Q. Are you telling me work-place gossip,
16 Mr. Tuccio?

17 A. That was -- that was what the
18 employees said.

19 Q. Okay.

20 A. So -- okay? So, that was just -- you
21 know, it's a dangerous consequence to go to
22 headquarters and make a complaint. You have to
23 do things step by step, the way the employee
24 handbook tells you to do it.

25 Q. You say you complained to Mr. Abraham?

1 S. TUCCIO

2 A. Yes.

3 Q. Did you complain to the building
4 supervisor?

5 A. No.

6 Q. Did you complain to the general
7 manager, Mr. Donohue?

8 A. About -- no.

9 Q. Let's go --

10 A. I did go to the union rep and I
11 telephoned him in July and -- I mean, I
12 telephoned the union rep who then said, uh,
13 Mr. Dooley said, "Oh, gee, I'll get back to
14 you. I'll call you back." And then I never
15 got a call back and I kept calling back his
16 office, the secretary, and I'd say, "I want to
17 talk to Mr. Dooley. He said he was going to
18 get back to me." She said, "Well, he's out in
19 the field; he's out in Jersey; he's out in" --
20 "he's sick today; he took a personal day off."
21 They would always make an excuse and he'd never
22 get back to me.

23 Q. That's the union. I can't control the
24 union.

25 A. Okay.

1 S. TUCCIO

2 airport, you know, with -- I saw him sometimes
3 working at the airport.

4 Q. Outside or inside?

5 A. Um, he was working inside.

6 Q. Okay. Let's go on to -- we talked
7 about Justin Avery, we talked about -- that may
8 be a different name. Salem Aziz -- I'll come
9 back to Justin Avery -- is he a person of
10 color?

11 A. Salem Aziz I guess is black skinned,
12 if that's what you mean.

13 Q. And what does he know about you?

14 A. Well, he worked in the rover, I guess.
15 I -- you know, he always worked in the rover.

16 Q. The rover being the car?

17 A. The car that -- yeah.

18 Q. So, he drove around the airport?

19 A. Yes.

20 Q. Outside on the tarmac?

21 A. That's correct.

22 Q. In the cold, in the elements, right?

23 A. Well, what do you mean? The car --
24 the windows are closed, it's air conditioned in
25 the summer and it's heated in the winter. No,

1 S. TUCCIO

2 Q. So, when she wasn't with the bag room
3 with you, she was in other places inside?

4 A. That's correct.

5 Q. And I think I spelled Ingrid's name.
6 Let's pass by Cabanilla and Caraballo and I
7 know about James Donohue. Let's talk about
8 Ruby Hooker.

9 MR. WEISS: R-u-b-y and Hooker is
10 just the way it sounds.

11 Q. How did she know about you?

12 A. Ruby Hooker is a regular who worked
13 every day, Monday through Friday, at Avianca
14 Airlines, from August -- when I started,
15 August 11th, when I started at Avianca
16 Airlines, through January 20th.

17 Q. So, she was --

18 A. -- a regular.

19 Q. -- a regular? Okay.

20 A. A regular employee who was employed
21 there every day. And she is, again, a woman
22 who had black skin and worked always an indoor
23 assignment and she always, um, she always, I
24 guess, looked down on me like I was some kind
25 of an inferior person.

1 S. TUCCIO

2 Q. Okay. Well, we're not going to talk
3 about that, okay?

4 Do you speak any other languages, sir?

5 A. No.

6 Q. You're not bilingual in any way?

7 A. No.

8 Q. Did you ever observe Ms. Hooker
9 outside, maybe on the tarmac?

10 A. Never, never. Always in the inside.

11 Q. In the bag room?

12 A. No. Always inside.

13 Q. Where?

14 A. Usually on the jet bridge.

15 Q. Muhamed Khan, you spell it
16 M-u-h-a-m-e-d K-h-a-n?

17 A. Right. Yeah, I believe that spelling
18 is incorrect.

19 Q. Probably. But let me just ask you:
20 You said that Ms. Hooker was a person of color?

21 A. She was a black skinned woman.

22 Q. Now we're up to Mr. Khan. Is he a
23 person of color?

24 A. He has black skin.

25 Q. And what does he know about you or

1 S. TUCCIO

2 2009, he did not have seniority over me.

3 Q. Cecil Santiago -- oh, wait a minute.

4 That's probably Efrain Santiago, right?

5 A. Efrain, that's correct. I put down
6 not sure of first name.

7 Q. Cecil now equals Efrain?

8 A. Efrain D. Santiago, yes.

9 Q. Okay.

10 A. Instructor.

11 Q. Who's Kevin Stevenson?

12 A. Kevin Stevenson --

13 Q. How does he know about you?

14 A. You didn't ask me. All right. Okay.
15 He was in my class of May 2009. He took all
16 the training classes that I did.

17 Q. That's why you identified him?

18 A. Yes.

19 Q. Is he a person of color?

20 A. Yes.

21 Q. And why is -- so, what?

22 A. Okay. Well, all right. I saw him.
23 He would be assigned for a day or two. He had
24 a regular 40-hour-a-week job some place and I
25 would be -- I would see him when he would be

1 S. TUCCIO
2 employees who were Caucasian and worked
3 overtime?
4 A. There -- there were some.. That's --
5 yes.
6 Q. Both inside and outside posts?
7 A. Yes.
8 Q. And that was during the entire time
9 that you were there, from when you were first
10 posted until you were terminated in
11 January 2010, right?
12 A. Um, well, there were very few
13 Caucasian people, uh, there weren't --
14 Q. My question is: You observed
15 Caucasian officers working both inside and
16 outside on temporary overtime assignments? You
17 said there were some?
18 A. There were some, yes. Most -- most of
19 them were black skinned.
20 Q. The overtime?
21 A. Yes.
22 Q. I'm just trying to find a breaking
23 point because it's coming up to 1 o'clock.
24 Mr. Tuccio, JC is the personnel member
25 that you reference?

1 S. TUCCIO

2 talk about Sunje and then we'll take a break.

3 What -- first of all, do you know who Sunje,
4 S-u-n-j-e, is?

5 A. Okay. I believe his name should have
6 been spelled S-u-n-j-a-y, first name.

7 Q. Okay. Is he a person of color?

8 A. Yes. Or a black skinned person, yes.

9 Q. How does he know you? What's relevant
10 to you in regards to him?

11 A. Oh. Well, I believe he would drive
12 the, uh, rover.

13 Q. He drove the rover?

14 A. Yeah.

15 Q. When was he driving the rover?

16 A. I saw him sometime -- I don't know the
17 exact dates.

18 Q. So, you don't know the circumstances
19 of his assignment, you're just observing?

20 A. That's correct.

21 Q. Okay. That's a good place to take a
22 breaking point. That's why I wanted to do it
23 that way. We'll come back to it. What do you
24 say we reconvene at 1:45? Is that good?

25 A. (Witness nodding.)

1 S. TUCCIO

2 Q. It is now going on about 1 o'clock.

3 (Whereupon, a recess was taken at
4 12:57 p.m. and the testimony resumed at
5 1:40 p.m.)

6 Q. I just remind you, you're still under
7 oath. You have to say it audibly.

8 A. Yes.

9 Q. Thank you.

10 Let's talk about the training -- let's
11 talk about Justin Avery and the training course
12 and Lowel Caraballo.

13 It's my understanding that you allege
14 that whoever scored -- that Caucasian employees
15 were scored higher in that training course that
16 we discussed, that you testified to?

17 A. Well, they -- we did well.

18 Q. They did well and then they were
19 given -- you say that they were -- you allege
20 that they were given lesser assignments?

21 A. I don't allege. They were given.
22 Both -- all three of us, Justin Avery, Lowel
23 Caraballo and myself, all were assigned to the
24 nightshift, that is 11 p.m. to 7 a.m., at
25 Terminal 4, doing traffic outside. You know,

1 S. TUCCIO

2 A. I don't remember the name of the guy.
3 And he was kind of gloating over the fact that
4 I got stuck in traffic while he, uh, was
5 working over there.

6 Q. Was he Caucasian?

7 A. Um, no.

8 Q. A person of color?

9 A. Yes.

10 Q. But you don't know his name?

11 A. (Witness nodding.)

12 Q. There's nothing that would jog your
13 memory?

14 A. No.

15 Q. And you don't know the circumstances
16 of his assignment? You just know what he said
17 to you?

18 A. Um, yes. But these three people that
19 I named, you know, um, Justin Avery got high
20 scores. I mean, he got perfect scores.

21 Q. And Justin Avery is Caucasian?

22 A. Yes.

23 Q. And Lowel Caraballo is Caucasian?

24 A. Yes. And he was -- he was assigned
25 to, um, you know, the traffic over and over

1 S. TUCCIO

2 you know, some of the people in my class did
3 end up in other buildings in other jobs, you
4 know, and I was kind of wondering how -- how
5 would some of them end up being, um, you know,
6 cargo scanning, doing cargo scanning in an air
7 conditioned building like Building 20, while --
8 uh, on the dayshift, while I would get stuck,
9 uh, you know, working the graveyard shift --

10 Q. So --

11 A. -- doing traffic, which is really the
12 most -- the hardest job and the most
13 undesirable job of all the security guard jobs.

14 Q. So, you're just drawing a supposition
15 of what you observed, right?

16 A. Well, I'm just saying this is what
17 happened to the three of us, you know, and
18 that's why I'd like to find out after these two
19 people went on -- left -- finished with
20 Terminal 4, where they went on from there.

21 Q. You're saying traffic is an
22 undesirable job?

23 A. Absolutely.

24 Q. But you're only basing the connection
25 to the scores? And I'm referencing the

1 S. TUCCIO

2 our, um, F93 fire guard license together and
3 then we were all told to go to Building 14 to
4 pick up our badge and our photos there. We did
5 everything together. So, that would be sort of
6 like the class of May 2009.

7 Q. I get you. But what I'm trying to
8 make sure I understand is this: The course to
9 which you refer, that you and Mr. Avery and
10 Mr. Caraballo got these allegedly high scores,
11 is the course that Efrain Santiago scored the
12 test, that FJC Security gave to the applicants,
13 the one that you mentioned, for four days,
14 that's -- that's the one, right?

15 A. Well, it was that course, plus the
16 one-day course when we took to drive on the
17 tarmac. You know, Justin Avery and I were in
18 the same -- we were in the same course. There
19 were three people who trained for that and on
20 the other course that was for the bomb detector
21 on Thursday. Now, I did not train at the same
22 time that Lowel Avery trained.

23 Q. Okay.

24 A. So, I don't know what scores he got.

25 Q. You just confused me. You don't know

1 S. TUCCIO

2 A. All right. I had to go to Room 228 in
3 Building 75.

4 Q. How did you know that?

5 A. I was telephoned by JC at my home.

6 Q. Do you know when that happened?

7 A. Um, it -- May 21st -- let's see. It
8 says May 21st. He may have called me up on
9 that date. I don't remember the exact date,
10 but he may have called me on that date.

11 Q. And then you went to the airport and
12 to this building. What building?

13 A. Yes, this -- well, this Building 75,
14 Room 228. And he -- he gave me this sheet.
15 And I believe this was given to me after the
16 class -- I think this is about the time that
17 the classes were completed. It says May 21st.
18 May 21st may have been -- I think it might have
19 been a Thursday or a -- I think it's a Friday.
20 Yeah, I think it's a Friday, after the classes
21 were finished.

22 Q. And you went to this building. Who
23 did you go to see?

24 A. I went to see JC, JC himself.

25 Q. And what did he say to you and what

1 S. TUCCIO

2 did you say to him?

3 A. Oh, I don't remember the discussion.

4 Q. Anything that would refresh your
5 recollection?

6 A. Excuse me?

7 Q. Anything that would refresh your
8 recollection?

9 A. No.

10 Q. No?

11 A. I don't think so.

12 Q. And what did he do? Did he give you
13 something?

14 A. Well, he -- he -- he gave me this.

15 Q. And did you read through it?

16 A. Um, yeah.

17 Q. Did you ask any questions?

18 A. No.

19 Q. Did you see him fill out the name at
20 the top there where it says --

21 A. I don't remember seeing or . . .

22 Q. You didn't fill out your name at the
23 top there, the --

24 A. I --

25 Q. -- print that says --

1 S. TUCCIO

2 A. Yes.

3 MR. WEISS: Let's mark this.

4 (Whereupon, Defendant's Exhibit E,
5 Declaration of Samuel Tuccio, was marked
6 for identification as of this date by
7 the reporter.)

8 Q. Mr. Tuccio, I'll represent to you that
9 this is a declaration that you delivered to me
10 in support of your initial disclosures. It's
11 entitled Declaration of Samuel Tuccio and it's
12 marked Defendant's Exhibit E. Do you recognize
13 that? It's a multiple-page document.

14 A. Yes. Okay, yes.

15 Q. That is your declaration, right?

16 A. Yes.

17 Q. And if you turn the page once or twice
18 to your signature, on that second and fourth
19 page, that's your signature there?

20 A. Yes.

21 Q. May I have that back, please?

22 A. (Handing.)

23 Q. Let's go back to -- unfortunately,
24 this is not Bates stamped. I'm going to show
25 you the last document on that document. It's

1 S. TUCCIO

2 entitled FJC Securities, Inc.

3 A. Yes.

4 Q. It's apparently another scheduling
5 form. Do you recognize that?

6 A. Yeah, this is the assignment sheet to
7 Avianca Airlines.

8 Q. How did you acquire that document?
9 Where did you go to get that document? Let me
10 rephrase that.

11 When did you first see that --

12 A. I --

13 Q. I'm rephrasing. Hold on.

14 When did you first see that document?
15 Go ahead.

16 A. Okay. I -- this is a document I had
17 to go to Room 228 at, um, the Building 75, and
18 I believe I signed this and I believe they gave
19 me a copy of it.

20 Q. How did you know to go to Building 75?

21 A. Um, Mr. JC telephoned me. He left a
22 message on my telephone answering machine.

23 Q. When you arrived, where did you go?

24 A. Well, I went to Room 228.

25 Q. And who was there at the time? Did

1 S. TUCCIO

2 you see Mr. JC?

3 A. Yes.

4 Q. And did he identify himself as JC or
5 did you know it was JC?

6 A. Well, I knew it was JC because I've
7 seen him before.

8 Q. Did he say anything to you?

9 A. Well, he told me that, you know, he
10 had found an assignment -- he said -- I asked
11 for 20 to 24 hours and he had found an
12 assignment, a part-time one that -- he said
13 that, you know, he wanted to know if I was
14 interested.

15 Q. So, he offered it to you?

16 A. Yes, that's correct, yeah.

17 Q. And did you accept it?

18 A. Um, yes.

19 Q. Did you review and read that document
20 before you signed it?

21 A. Yes.

22 Q. I'm going to ask you again. The
23 top -- let me see just -- just push it down so
24 I could see it. It says Tuccio, I guess Sam or
25 S. Do you know whose handwriting that is?

1 S. TUCCIO

2 A. No.

3 Q. Do you recall ever filling in that
4 blank at the top for the name?

5 A. No.

6 Q. And that's your signature at the
7 bottom, is it not?

8 A. Yes.

9 Q. Your left corner.

10 A. Yes.

11 Q. Okay.

12 MR. WEISS: By the way, the
13 August 10th, 2009 scheduling form that
14 the witness just testified to is listed
15 in his declaration as paragraph 22, for
16 purposes of the record.

17 Q. Would you agree with me --

18 A. What did you say?

19 Q. -- that what you just looked at is
20 paragraph 22?

21 A. Yup.

22 Q. Because I don't have it Bates stamped,
23 so I'm referencing your paragraphs.

24 Paragraph 9 of the declaration
25 references an affidavit you gave to a National

1 S. TUCCIO

2 that to that effect?

3 A. Yes.

4 Q. What was the stated reason?

5 A. Um, the stated reason was that I, uh,
6 refused an assignment --

7 Q. Okay.

8 A. -- to work on the tarmac earlier that
9 morning on January 20th.

10 Q. You deny that you refused the
11 assignment?

12 A. No.

13 Q. Did you also go through a security
14 door?

15 A. Yes.

16 Q. And did you also enter an incorrect
17 pin in that security door?

18 A. No.

19 Q. Did an alarm sound?

20 A. Yes.

21 Q. What did Mr. Cabanilla -- was
22 Cabanilla one of the tour supervisors?

23 A. He was the supervisor on duty at that
24 time.

25 Q. Okay. And he gave you an assignment

1 S. TUCCIO

2 to the tarmac?

3 A. Yes.

4 Q. What did you tell him?

5 A. I told him that it was too cold to
6 work out there on the tarmac and I -- I said,
7 "You" -- "You know, you" -- "you put me out
8 there before. It's much too cold to work out
9 there. I would rather go home than work
10 there."

11 Q. You went home?

12 A. Um, and I -- I told him I was going --
13 you know, I -- he would not change his mind, so
14 I told him --

15 Q. What did he say to you?

16 A. -- I'm going home.

17 Um, he just stood -- stood aside and
18 followed me as I walked out the door and he
19 stood out there in the hallway and he asked me
20 for my badge and I said, "I need it to go out."

21 Q. Now, this is January --

22 A. 20th.

23 Q. -- 20th. This says January 19th,
24 2010.

25 A. Well, it really meant -- it should

1 S. TUCCIO

2 have been the 20th.

3 Q. January the 20th?

4 A. Yeah.

5 Q. Are you issued a coat for cold
6 weather?

7 A. Cold weather?

8 Q. Cold weather coat, cold weather gear.

9 A. Um, I don't remember whether they gave
10 me -- gave us a jacket -- a small -- a light
11 jacket or not, but it was not a -- I don't -- I
12 don't really remember.

13 Q. Do you own --

14 A. I think it was -- it was -- you know,
15 it -- this -- when you're talking about a
16 jacket, you're not talking about a jacket
17 that's made for Siberia, you're talking about
18 temperatures where the temperature is
19 17 degrees above zero out there and there's
20 always -- at night, you know, I'm talking about
21 4 a.m., 5 a.m. in the morning, 35 to 40 mile an
22 hour wind that makes the windchill factor make
23 it feel like it's 10 degrees below zero. It is
24 brutal in the winter. It's so brutal that
25 those men that work for American Eagle, some of

1 S. TUCCIO
2 them, they would talk about -- and some of them
3 did quit.

4 MR. WEISS: Move to strike as
5 nonresponsive.

6 Q. I don't care about any other employee
7 other than FJC.

8 A. Okay.

9 Q. You swiped your card and put in your
10 pin, did you not?

11 A. Yes. I put in the correct pin.

12 Q. And you couldn't get through?

13 A. And the alarm went off and I swiped
14 the card a second time and put in my pin again.
15 Mr. Alberto Cabanilla was at the end of the
16 hallway watching me and he was talking to
17 somebody on his cell phone while I did that.

18 Q. Did you go through a door?

19 A. Did I go through the door, yes.

20 Q. While the alarm was sounding?

21 A. Yes.

22 Q. In all this training that you had
23 done, were you not -- weren't you trained in
24 the importance of security procedures?

25 A. Um, yes.

1 S. TUCCIO

2 Q. So you know this was wrong, didn't
3 you?

4 A. I believe that Mr. Cabanilla was --

5 Q. Sir --

6 A. -- on the telephone --

7 Q. -- did you not breach the perimeter?

8 A. -- telling somebody to void my pass --
9 my ID.

10 Q. You don't know that for a fact, do
11 you?

12 A. I do not know that for a fact.

13 Q. Did you breach the perimeter?

14 A. Did I breach the perimeter? The alarm
15 went off --

16 Q. Okay.

17 A. -- and he was a witness. He saw me go
18 through the door.

19 Q. Alberto Cabanilla?

20 A. Yes. He was standing in the hallway
21 outside the doorway of Avianca Airlines and he
22 was on the cell phone talking to someone.

23 Q. But you weren't in enough close
24 proximity for him to know what he was saying
25 and what he was doing, other than seeing him on

1. S. TUCCIO

2. putting them outside."

3. Q. But that language you just said about
4. the young, muscular men, that's not in the
5. affidavit, is it?

6. A. No.

7. Q. Okay. And he did offer you other
8. options in this paragraph ten that you reviewed
9. and signed under penalty of perjury, correct?

10. A. Cabanilla on a couple of occasions
11. gave the option --

12. Q. -- of not working?

13. A. Yes.

14. Q. Okay. You mentioned a fire guard
15. license in Exhibit -- Defendant's Exhibit E,
16. and we'll have to find the paragraph. Is that
17. the fire guard license which says -- let me
18. just --

19. A. To answer your question, that's a
20. receipt. It is not -- the fire guard license
21. is like a badge with a picture of the --

22. Q. I understand, but --

23. A. That's the receipt --

24. Q. It says over here --

25. A. -- for passing the exam.

1 S. TUCCIO

2 Q. It says NYCFD?

3 A. Yeah.

4 Q. That's the receipt for passing the
5 fire guard exam, correct?

6 A. Yes.

7 Q. Okay. And that is -- you reference it
8 as paragraph 21 in your declaration, just for
9 the record.

10 A. Paragraph 21.

11 Q. Right. Okay.

12 A. Oh, yeah.

13 Q. In Defendant's Exhibit B, Bates No. D
14 as in David 000005, do you recognize this
15 employee violation notice dated August 10,
16 2009?

17 A. I believe this was attached to a
18 letter I sent to the union.

19 Q. Well, is that your signature on the
20 right side?

21 A. Yes.

22 Q. Yes, the right side. Okay. That's
23 all I want to know.

24 Other than your hours changing to
25 24 hours, did your rate change at any time

1 S. TUCCIO

2 during your employment?

3 A. No. Well, yes, yes, it did, uh, I
4 think initially when I was at Terminal 4, at
5 the first week or more, I don't know how many
6 weeks, it was considered to be a probationary
7 period and I got paid a starting rate of \$7.25
8 an hour the first week and I don't remember how
9 many weeks afterward. It was -- it's
10 considered to be train -- you know, training
11 for the job, so, they just paid me the minimum
12 wage which is \$7.25 an hour.

13 Q. And then it moved up to \$9 an hour?

14 A. Afterward, yes.

15 Q. But it didn't change after that?

16 A. Yes, that's correct.

17 Q. These are the nonemployees. I think
18 you mentioned Gabriel Cruz already.

19 A. Yes.

20 Q. Is he listed only because he worked in
21 the bag room?

22 A. Um, well, I guess he knew the
23 conditions of the place that, you know, the,
24 um, bag room area was unheated. It had no
25 heat, got very cold, until November 27th, the

1 S. TUCCIO
2 day after Thanksgiving. At that time there
3 were just two space heaters way up on the
4 ceiling, a very high ceiling, this big
5 building, you know, that, you know, it was
6 extremely cold in there and, you know, he saw
7 me when he was there, obviously because --
8 and as well as his crew, uh, of baggage
9 handlers.

10 Q. And Al Dooley is the gentleman you
11 mentioned before?

12 A. The union representative.

13 Q. Did you file a grievance with the
14 union?

15 A. Um, well, the grievance was filed on,
16 I think, uh, February -- let's see, um, I think
17 it may have been -- I think maybe it was in
18 April.

19 Q. Did you --

20 A. In April of 2010.

21 Q. Have you since pursued that grievance
22 in any way?

23 A. Well, what happened was, Mr. Dooley
24 had to respond to the, uh, National Labor --
25 see, the National Labor -- the problem with

1 S. TUCCIO

2 Mr. Dooley was that he never answered a
3 telephone call.

4 Q. You mentioned that before.

5 A. Yes.

6 Q. I don't want to litigate the --

7 A. Okay.

8 Q. -- National Labor Relations Board
9 charge here.

10 A. Okay.

11 Q. I just want to know if you pursued
12 it --

13 A. Okay.

14 Q. -- further with the union.

15 A. I, um, went to the National Labor
16 Relations Board on February 5th of 2010 and
17 complained that the union that I pay dues for
18 and have a beautiful building out there in
19 Babylon, with beautiful secretaries and
20 everything else, had not helped me, and
21 Mr. Dooley had never talked to me. I had
22 called his office up over and over and over and
23 asked his secretary, this is important, to
24 please tell him to get back to me starting in
25 July, and then in December -- December 12th I

1 S. TUCCIO
2 hear about things, rumors. I suspect that
3 Mr. Dooley may have heard about this, because
4 on February 9th, four days after I went to the
5 National Labor Relations Board, complained
6 about him, and then he did not give me any
7 attention at all even though I had written to
8 him and called his office many times. He
9 finally called me up at home and he talked to
10 me and said, "I'm going to try to get your job
11 back. I'll speak to Mr. James Donohue, try to
12 get your job back for you."

13 Q. Is that as far as it went?

14 A. Um, well, then I believe, um, I
15 believe the documents that I submit to the
16 National Labor Relations Board, then he called
17 me and said that he had talked to Mr. Donohue
18 and Mr. Donohue said that he was willing to
19 give me the job back, but there was one thing
20 in its way, that The Port Authority of New York
21 and New Jersey would not issue me a new badge.
22 I mean this is what Mr. Dooley said orally on
23 the telephone.

24 Q. Okay. This is Dooley talking, right?

25 A. Yes.

1 S. TUCCIO

2 Q. Did you --

3 A. So, then --

4 Q. Did --

5 A. Okay. You have copies of the letters.

6 Just let me just finish. That I asked

7 Mr. Dooley to put this in writing. In other

8 words, I said, "Would you put this in writing?"

9 And I sent him a letter. I believe it was sent

10 by a certified mail, return receipt requested.

11 And I believe that was supplied to you, uh,

12 earlier, um, that I asked Mr. Dooley to put --

13 I said, "I want you to put down in writing that

14 the only reason why I could not get a job was

15 that The Port Authority of New York & New

16 Jersey would not give me a badge," and

17 Mr. Dooley --

18 Q. And -- go ahead.

19 A. -- Mr. Dooley did not do that. And

20 when I called him up on the phone and asked him

21 to do it, he refused to do it.

22 Q. Did --

23 A. I said, "Why not? Why didn't you put

24 it in writing?"

25 Q. Did you ask him to get a position in

1 S. TUCCIO

2 A. Well, if it covers the period -- you
3 know, you listed 2008 to the present and that's
4 what covers that period.

5 Q. But this is just treatment that you
6 sought for things -- for other things unrelated
7 to your employment at FJC, correct?

8 A. Unrelated to my employment at FJC?
9 Uh, I guess that would be correct, yeah.

10 Q. Okay. In interest to your privacy, I
11 haven't been clear about it, about what it is;
12 although, all of this is covered by the
13 confidentiality stipulation.

14 During the course this litigation,
15 when you filed this lawsuit in -- before, when
16 you filed the charge with the E -- with the New
17 York State Department -- the State Division of
18 Human Rights, you've been representing
19 yourself; isn't that true?

20 A. That's correct.

21 Q. So, you have not incurred any
22 attorneys' fees?

23 A. That's correct.

24 Q. Earlier today I asked you whether you
25 had received the FJC sexual harassment and

1 S. TUCCIO
2 antidiscrimination policy and you testified
3 that you did and admitted signing it, which was
4 actually an exhibit to the letter I sent to
5 Joseph -- the Honorable Joseph Bianco, which is
6 the U.S. district judge in this case. Do you
7 recall testifying to that?

8 A. Yes.

9 Q. Did you file any complaint with the
10 company under that procedure? Let me rephrase
11 that question.

12 Did you file any written complaint
13 under that procedure with the company since
14 you -- during the -- from May '09 to
15 January 2010?

16 A. January 2010? Well --

17 Q. I mean, I know --

18 A. The written -- of course the written
19 is the -- originally I went to the, you know,
20 the New York State --

21 Q. I'm not interested in the agencies and
22 the --

23 A. Other than that, I did not write to
24 the company officials about the, uh,
25 discrimination of Alberto Cabanilla and putting

1 S. TUCCIO

2 me on the tarmac all the time during heavy
3 rain, extreme cold, and asking me to do this
4 two, three times a week in December 2009 and
5 January 2010, while other employees who were
6 working at regular jobs that were indoors
7 were --

8 Q. I understand, sir.

9 A. -- not asked to go out there and
10 apparently consider themselves too good to go
11 out there from the way they looked at me.

12 Q. Okay. I --

13 A. They looked at me like I was some kind
14 of second-class or third-class citizen when
15 they saw me.

16 Q. Did anyone ever tell you -- I withdraw
17 that question. Just bear with me.

18 In your disclosures which is --

19 A. Yes.

20 Q. -- Defendant's Exhibit D, you
21 disclosed that you're seeking damages of
22 23,940.

23 A. Um, yes.

24 Q. And you create a calculation down
25 there?

1 S. TUCCIO

2 you know, asking him to help me with the
3 problem, to telephone me, and I never got a
4 response.

5 Q. So, that is tied to the same
6 grievance?

7 A. Well, it is sort of like an oral
8 agreement -- well, it is a written agreement in
9 a way because I did write to him asking for
10 help in this problem that I was having with
11 Mr. Alberto Cabanilla, uh, selecting me to go
12 out there on the tarmac while other people who
13 signed the same agreement as me with black skin
14 or who were Hispanic, who he treated as if they
15 were better. I mean, we didn't go into that,
16 but he treated them like they were better than
17 me. He treated them with greater respect than
18 me, which I objected to. And this was -- I
19 think I mentioned that, that the women were on
20 the, uh, who were working out there on the jet
21 bridge, they would be assigned from 4 a.m. to 8
22 a.m. They would wait inside the building where
23 it was warm until about 5:06 in the morning
24 when the plane came in. They worked two hours
25 on the airplane, on the jet bridge or -- and

1 S. TUCCIO
2 it's just breaks, my job would be to, uh, put
3 it inside a big plastic -- it was like an
4 oversized Glad bag, and I would wrap it up and
5 then I would remove one of the airplane's
6 stickers. There would be a sticker with a
7 number on it and you -- you could remove part
8 of it and I would have to give that to
9 Mr. Alberto Cabanilla and report to him that a
10 bag had burst, and it would have, you know, the
11 name of the passenger, I guess the destination,
12 whether it was Medina or Bogota, Columbia, and
13 the name of the airline.

14 Q. Anything else?

15 A. Uh, no. As I pointed out in my, uh,
16 you know, in my rebuttal, the description that
17 was supplied by the attorney was incorrect.

18 Q. Let me just give you one more
19 reference, Defendant's Exhibit B. I show you
20 what is Bates No. D000048. Do you recognize
21 that document?

22 A. Your asking me if I --

23 Q. Do you recognize that document?

24 A. That's -- yeah. It's the document I
25 signed.

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S. TUCCIO

Q. Did you read and understand it when
you signed it?

A. Yes.

Q. Is that your signature at the bottom
of the page?

A. Yes.

Q. Okay.

(Continued on next page to include
jurat.)

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S. TUCCIO

MR. WEISS: I don't think I have any more questions at this time of this witness.

I reserve the right to recall the witness in the event that things change.

We will probably be ordering a transcript. Mr. Tuccio, you'll receive is a copy of the transcript, at which time you'll have an opportunity to review the transcript for typos that he may undertake. That's it. That's all I have. Thank you.

(Time noted: 3:44 p.m.)

SAMUEL TUCCIO

Subscribed and sworn to before me
this ____ day of _____, 20 .

NOTARY PUBLIC

1 S. TUCCIO

2 C E R T I F I C A T E

3
4 STATE OF NEW YORK)


5 :

6
7 COUNTY OF BRONX)

8 I, SCOTT TORRANCE, a shorthand reporter
9 and Notary Public of the State of New York, do
10 hereby certify:

11 That, SAMUEL TUCCIO, the witness whose
12 examination is hereinbefore set forth, was duly
13 sworn, and that such examination is a true
14 record of the testimony given by such witness.

15
16 I further certify that I am not related
17 to any of the parties to this action by blood
18 or marriage; and that I am in no way interested
19 in the outcome of this matter.

20
21 

22 Notary Public
23
24
25

Declaration of Scott A. Weiss
EXHIBIT: 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SAMUEL TUCCIO,

Plaintiff,

-against-

Civil Action No.
12-5506
(JFB) (GRB)

FJC SECURITY SERVICES, INC.,

Defendant.

-----x

100 Federal Plaza
Central Islip, New York

September 12, 2013
11:19 A.M.

DEPOSITION of FJC SECURITY SERVICES, INC., the
Defendant herein, by FRANCES VELAZQUEZ, taken
pursuant to Notice, and held at the above time and
place before Ginnette Corr, a stenotype reporter and
Notary Public of the State of New York.

1 FRANCES VELAZQUEZ

2 (Plaintiff's Exhibit 1, Airport
3 security agent training marked for
4 identification.)

5 F R A N C E S V E L A Z Q U E Z, the Witness
6 herein, having been first duly sworn by
7 Ginnette Corr, a Notary Public of the
8 State of New York, was examined and
9 testified as follows:

10 EXAMINATION BY

11 MR. TUCCIO:

12 Q Please state your name for the record.

13 A Frances Velazquez.

14 Q Where do you presently reside?

15 A 104-80 127th Street, Richmond Hill, New
16 York 11419.

17 Q Good morning, Ms. Velazquez. Thank you
18 for being here this morning.

19 Would you please state your full name
20 for the record?

21 A Frances Velazquez.

22 Q What is your current business address?

23 A Building Number 75, JFK Airport,
24 Jamaica, New York 11430.

25 Q Please state your position.

1 FRANCES VELAZQUEZ

2 A Personnel office manager.

3 Q What was your position at FJC Security
4 Services on May 1, 2009?

5 A Personnel office manager.

6 Q Describe your work experience before
7 FJC Security Services.

8 A I was working at the Delta Terminal as
9 a security office manager.

10 Q For how many years?

11 A For 15 years.

12 Q When did you begin working for FJC?

13 A I began May of 2004.

14 Q What was your position and location?

15 MR. WEISS: Objection as to form. You
16 may answer.

17 A My position was an administrator, and
18 we were located at Building 80.

19 Q What was your next position and
20 location after that?

21 MR. WEISS: Objection as to form.
22 You may answer.

23 A I was the office manager, and the next
24 location was Building 75. Personnel office
25 manager, Building 75.

1 FRANCES VELAZQUEZ

2 Q What year did you start that?

3 A 2005.

4 Q What was your next position and
5 location?

6 MR. WEISS: Objection as to form.

7 You may answer.

8 A It's the current position and location.

9 Q You began that what year?

10 A Began --

11 MR. WEISS: Objection.

12 Q Your current position.

13 MR. WEISS: Objection; asked and
14 answered.

15 But you may answer it.

16 A 2005.

17 Q What training did you receive to
18 qualify you to be a personnel office manager?

19 MR. WEISS: Objection as to form.

20 You may answer.

21 A The training that I received was
22 basically on the job and years of experience.

23 Q Do you have a college degree or
24 certificate?

25 A No.

1 FRANCES VELAZQUEZ

2 Are you interested in now or in 2009?

3 MR. TUCCIO: Well, in 2009.

4 MR. WEISS: Okay. You can answer.

5 A In 2009, I have no knowledge of how the
6 human resources was run. I was not part of human
7 resources.

8 Q The personnel department. You were not
9 a part of the personnel department?

10 A Personnel, yes, but you said human
11 resources.

12 Q All right. How does the personnel
13 department test new employees for the job of
14 airport security agent?

15 A They're given a training class. It's
16 not an actual test.

17 MR. WEISS: I don't mean to interrupt
18 you, but you're still in 2009, correct?

19 MR. TUCCIO: Yes.

20 Q Training class for how many days?

21 A 2009? Five days.

22 Q How does the personnel department
23 determine which assignments to give to new
24 employees?

25 MR. WEISS: Not to burden the record,

1 FRANCES VELAZQUEZ

2 so I'm not objecting every time, I'm going
3 to suggest to you that you're talking about
4 2009, unless you say otherwise.

5 MR. TUCCIO: Yes.

6 MR. WEISS: We're in agreement,
7 correct?

8 MR. TUCCIO: Yes.

9 MR. WEISS: Go ahead. This is in 2009.
10 Go ahead, Frances.

11 A Personnel -- I'm sorry. What was the
12 question?

13 MR. WEISS: Why don't you read back the
14 question.

15 (The requested portion of the record
16 was read back by the reporter.)

17 A The assignments are random. They're
18 not determined by the personnel department.

19 Q I just want to give you Exhibit Number
20 1. I'll give one to you and one to your attorney
21 (handing).

22 MR. WEISS: One second.

23 Q Just look this over. It has five tabs
24 in it. The first one, you'll see the tab has --
25 in each case, what I've done is either I have a

1 FRANCES VELAZQUEZ

2 If you understand the question, you may
3 answer it.

4 A I don't understand your question.

5 Q Is there any relation between the test
6 scores in the training class given by the
7 instructor, Efrain Santiago, and the first
8 assignment given to a new airport security agent?

9 A No.

10 Q Is there any relation to the test score
11 of the F93 fire exam and the first assignment
12 given to a new airport security agent?

13 MR. WEISS: Objection as to form.

14 You may answer if you understand the
15 question.

16 A No.

17 Q Is there any relation -- let me just
18 point out one thing. It's on the last tab.
19 You'll see it says "cargo security screener." The
20 question is about that course.

21 Is there any relation to the test score
22 of the exam given at the end of a course taught by
23 John Harding of Delta Air Lines on a cargo
24 security screener --

25 MR. WEISS: Objection as to form.

1 FRANCES VELAZQUEZ

2 Q -- and the first assignment given to an
3 airport security agent?

4 MR. WEISS: Objection as to form.

5 You may answer.

6 A No.

7 MR. WEISS: Spell Harding, just so she
8 has it, Mr. Tuccio.

9 MR. TUCCIO: H-A-R-D-I-N-G.

10 Q The next question is on tab number one,
11 those certificates. One of them is from The Port
12 Authority of New York and New Jersey.

13 Is there any relation to the test score
14 of a four-hour course given by The Port Authority
15 of New York and New Jersey and the first
16 assignment given to a new airport security agent?

17 A No.

18 Q The next question is tab number two.

19 On the driving course, driving on the
20 Tarmac, is there any relation to the test score
21 given on the driving test course and the first
22 assignment given to a new airport security agent?

23 MR. WEISS: Objection as to form.

24 You may answer.

25 A No.

1 FRANCES VELAZQUEZ

2 MR. WEISS: For the record, Mr. Tuccio,
3 I want to point out to you that I've never
4 seen this document, which is entitled
5 "airport ground vehicle operations."
6 Everything you've given to me in these tabs
7 for this litigation started with this page.

8 MR. TUCCIO: No.

9 MR. WEISS: I'm not arguing. I'm just
10 saying, this is the first time I've seen it.

11 MR. TUCCIO: At the last deposition of
12 James Donohue, the exhibit -- this is the
13 same exhibit.

14 MR. WEISS: That's fine. I just
15 pointed it out to you.

16 Q Is there any relation to the number of
17 years of experience as a security guard and the
18 first assignment given to a new airport security
19 agent?

20 MR. WEISS: Objection as to form.

21 You may answer.

22 A No.

23 Q Does the previous employment record of
24 an employee have any relation to the assignment
25 given to a new airport security agent?

1 FRANCES VELAZQUEZ

2 MR. WEISS: Objection as to form.

3 You may answer it.

4 A No.

5 Q Is there any relation between an
6 employee's educational background and the first
7 assignment given to a new airport security agent?

8 MR. WEISS: Objection as to form.

9 You may answer.

10 A No.

11 Q Who makes the decision on which
12 assignment to give a new employee?

13 MR. WEISS: Objection as to form.

14 You may answer.

15 A The schedules are written up and handed
16 out randomly.

17 Q Let me just go back.

18 You are telling me that there is no
19 person who is involved in making the decision on
20 which assignment goes to a new airport security
21 agent?

22 A Correct.

23 Q Are you in charge of hiring instructors
24 or members of the personnel department?

25 A No.

1 FRANCES VELAZQUEZ

2 Q Are the test scores used in deciding
3 which assignments are given to the airport
4 security agent?

5 MR. WEISS: Objection; asked and
6 answered.

7 You may answer.

8 A No.

9 Q What happens to the test scores? You
10 said they're stored in a folder. Okay.

11 MR. WEISS: Are you answering your
12 question?

13 MR. TUCCIO: She answered.

14 Q New employees are trained by an
15 instructor, John Harding, of Delta Air Lines to be
16 cargo security screeners; is that correct?

17 MR. WEISS: Objection as to form.

18 You may answer.

19 Please refrain from cross-examining the
20 witness.

21 A He at that time participated in one
22 aspect of the training. He is not a trainer for
23 FJC Security.

24 Q Again, I'm asking this question.

25 Referring to the last question, is this

1 FRANCES VELAZQUEZ

2 not specialized training for an airport security
3 agent?

4 MR. WEISS: Objection as to form.

5 If you understand the question.

6 Please refrain from cross-examining the
7 witness.

8 A I don't know.

9 Q The Delta Air Lines instructor, John
10 Harding, gives a test at the end of the eight-hour
11 course.

12 What happens to this test?

13 MR. WEISS: Objection as to form.

14 If you understand the question, you may
15 answer it.

16 A I have no knowledge of what happens to
17 that.

18 Q Are the test scores from the cargo
19 screener test used to decide whether or not an
20 employee gets assigned to Building 20 doing the
21 testing of luggage for traces of explosives?

22 MR. WEISS: Objection as to form, but
23 you may answer.

24 A No.

25 MR. WEISS: I'm going to interrupt.

1 FRANCES VELAZQUEZ

2 Can you read the question back again?

3 (The requested portion of the record
4 was read back by the reporter.)

5 Q In 2009, Efrain Santiago taught a
6 one-day class on driving a vehicle on the Tarmac
7 at JFK.

8 Is this not specialized training of an
9 airport security agent?

10 MR. WEISS: Objection as to form.

11 If you understand the question, you may
12 answer.

13 A It's not specialized if everybody's
14 doing it.

15 Q Isn't it specialized in the sense that
16 this is not general security guard training that
17 can be used for any job anywhere?

18 MR. WEISS: Objection as to form.

19 Please refrain from arguing with the
20 witness.

21 Q I don't understand what you mean, it's
22 not specialized if everyone is doing it.

23 What do you mean by that? Not --

24 MR. WEISS: You want to rephrase the
25 question?

1 FRANCES VELAZQUEZ

2 Q What did you mean by that, if
3 everyone's doing it?

4 MR. WEISS: Objection as to form.

5 You may answer if you understand it.

6 A To me, something that is special,
7 specialized is when there's a small group, a
8 specialized group only doing this particular
9 function. Anybody with a driver's license can
10 take this class and does take this class and is
11 able to drive at the airport. It's not a
12 specialized particular skill.

13 Q But the training is specialized in that
14 it's for an airport security agent position at the
15 airport. I mean, you don't have Tarmacs
16 everywhere in the state.

17 MR. WEISS: Mr. Tuccio, that's not the
18 testimony. I'm going to object to the
19 question.

20 Please refrain from restating the
21 testimony and mischaracterizing it. Go on to
22 your next question. That's fine. If you
23 have follow-up questions, be my guest.

24 Q I just want to point out in that tab --

25 MR. WEISS: Which tab?

1 FRANCES VELAZQUEZ

2 MR. TUCCIO: The tab -- the picture of
3 my badge at the end -- at the end of tab
4 two. It should have a picture of my badge.
5 Next page.

6 MR. WEISS: You're referencing --

7 Q That driving course --

8 MR. WEISS: For the record, you're
9 referencing the badge dated, looks like,
10 May 11, 2010?

11 MR. TUCCIO: Yes. That's the badge
12 given to me by The Port Authority.

13 MR. WEISS: Go ahead.

14 Q That by taking that course, that
15 results in the designation DR1 or EV on this
16 badge.

17 Isn't that so?

18 A I'm sorry?

19 Q See the designation over here, DR1 EV?
20 That's put on my badge, because I took the driving
21 course.

22 MR. WEISS: Mr. Tuccio is referencing
23 the DR on the picture of the badge.

24 A Yes.

25 Q For this particular course, what

1 FRANCES VELAZQUEZ

2 happens to the test scores for the driving course?

3 MR. WEISS: Objection as to form.

4 If you understand the question, you may
5 answer.

6 A They're given to The Port Authority.

7 Q Are they stored anyplace at FJC?

8 MR. WEISS: Objection as to form.

9 You may answer.

10 A They're stored in your training file,
11 in a training file, yes.

12 Q Are the test scores from the test for
13 driving a vehicle on the Tarmac used to decide
14 whether or not an airport security agent gets
15 assigned to driving Rover 1 or Rover 2 at JFK
16 Airport?

17 MR. WEISS: Objection as to form.

18 You may answer if you understand the
19 question.

20 A No.

21 Q Again, I just want to make sure I
22 understand this.

23 On what basis are new employees given
24 their first assignment? There must be some basis.
25 Test scores, experience, education,

1 FRANCES VELAZQUEZ

2 recommendations?

3 MR. WEISS: Objection as to form, and
4 that's argumentative.

5 You may answer if you understand the
6 question.

7 A There's no basis. It's random. It's
8 first come, first gets the schedule.

9 Q Do you influence placement of new hires
10 on their first assignment in any way?

11 MR. WEISS: I'm sorry?

12 Q Do you influence the placement of new
13 hires on their first assignment in any way?

14 MR. WEISS: Objection as to the form.

15 If you understand the question, you may
16 answer.

17 A No.

18 Q I'm talking about May 2009 again.

19 What were the names of the other
20 employees and their positions in the personnel
21 department at Building 75?

22 A 2009, Stacey Thomas, JC Noboa.

23 Q Was there a woman named Louise Davis?

24 A She's not part of personnel.

25 Q She's not part of personnel.

1 FRANCES VELAZQUEZ

2 Well, was she in the office at Building
3 75?

4 A Yes.

5 Q Does Louise Davis speak Spanish?

6 A Not that -- no. Not that I know of.

7 Q Is Louise Davis Spanish or Hispanic?

8 A I don't know.

9 Q Did the other employees in the
10 personnel department influence the placement of
11 new hires on their first assignment in any way?

12 MR. WEISS: Objection as to form.

13 I don't know what you mean, Mr. Tuccio,
14 but if you understand the question, you may
15 answer.

16 A No.

17 Q Okay. If the placement of new hires
18 was entirely random, why not flip a coin to
19 determine which job they get, just as in football?
20 A coin is flipped to determine who gets the chance
21 to pass or receive the ball in every game.

22 MR. WEISS: Mr. Tuccio, I'm going to
23 object to the form.

24 Please refrain from -- there's a couple
25 of reasons why that question is improper.

1 FRANCES VELAZQUEZ

2 MR. WEISS: Assumes facts not in
3 evidence, and it's objection as to form.

4 You may answer it if you understand the
5 question.

6 A No.

7 Q The answer is?

8 A No.

9 Q Who made the decision on the second or
10 third assignments given to a new airport security
11 agent?

12 MR. WEISS: We're still in '09, right?

13 MR. TUCCIO: Yes.

14 MR. WEISS: Objection as to form.

15 A James Donohue.

16 Q Do the new hires who are trained in
17 Mr. Santiago's five-day class or in his driving
18 class or in the Port Authority class, are they
19 paid for their time during training?

20 MR. WEISS: Objection as to form.

21 If you understand the question, you may
22 answer it.

23 A No.

24 Q Are you aware that training an employee
25 without paying them is illegal under the state

1 FRANCES VELAZQUEZ

2 pages.

3 MR. TUCCIO: Let's go off the record
4 for a minute.

5 (Whereupon, a discussion was held off
6 the record.)

7 A No.

8 MR. WEISS: My objection is stated on
9 the record. Go on to your next question.
10 Go ahead.

11 Q Now I'm going to talk about my
12 assignment at Avianca Airlines in August of 2009
13 through January 20th of 2010. My supervisor was
14 Alberto Cabanilla. Supervisor Alberto
15 Cabanilla -- let me just say something, and then
16 I'll ask a question -- took me off my assignment
17 in the bag room on December 4, 2009 and ordered me
18 to work on the -- to stand on the Tarmac for three
19 and a half hours during heavy rain on that day,
20 cold weather in the 20-mile-an-hour wind.

21 Why didn't FJC Security Services
22 provide me with a vehicle such as a Ford Escape or
23 a Jeep Liberty for this job?

24 MR. WEISS: Objection as to form.

25 If you want to answer that long

FRANCES VELAZQUEZ

to bring your facts and circumstances,
because that, I think, is a relevant
question. I'm not going to have her answer
questions about people who may have driven
drunk and were issued warrants or done all
sorts of myriad things that has nothing to
do with what you're talking about. You're
talking about breaching a perimeter. You
said in the question Mr. Donohue said if you
breach the perimeter -- I'm paraphrasing
your question -- breach the perimeter, a
warrant can be issued. Ask her that
question.

Q All right. What I'm saying is, did
this ever happen, in fact? In other words, for
breaching a perimeter, an airport security agent
going through a door and the alarm goes off and
they keep on going, to your knowledge, did the
Port Authority ever issue, Port Authority police,
did they ever issue a warrant for the arrest of an
agent?

MR. WEISS: Go ahead.

A Yes.

Q Again, this is just a little different.

1 FRANCES VELAZQUEZ

2 MR. WEISS: Objection as to form.

3 You may answer it if you understand the
4 question.

5 A I don't work at terminals. I don't
6 know.

7 Q Did any airport security agent ever
8 complain about James Donohue?

9 MR. WEISS: You may answer. I don't
10 know how that's relevant, but go ahead. You
11 may answer.

12 A No.

13 Q Did any airport security agent ever
14 accuse James Donohue of making a statement such as
15 his actions caused the cancellation of flights or
16 for an entire terminal to be cleared of all
17 passengers?

18 MR. WEISS: Objection as to form.

19 You may answer it if you know the
20 answer.

21 A I don't understand the question.

22 Q Did any airport security agent accuse
23 James Donohue of making statements that were not
24 true, such as that his actions caused the
25 cancellation of airline flights or that his

1 FRANCES VELAZQUEZ

2 actions, the airport security agent's actions
3 caused an entire terminal at the airport to be
4 cleared of all people?

5 MR. WEISS: Objection as to form.

6 You may answer.

7 A To whom?

8 Q To the management at FJC Security
9 Services.

10 MR. WEISS: Objection as to form.

11 You may answer.

12 A No.

13 Q Did anyone ever accuse James Donohue of
14 telling them that the Port Authority police would
15 issue a warrant for their arrest when this was not
16 true?

17 MR. WEISS: I lost the first part of
18 it. Don't repeat it. Have her read it
19 back.

20 (The requested portion of the record
21 was read back by the reporter.)

22 MR. WEISS: Objection as to form, but
23 you may answer.

24 A To whom?

25 Q To the management at FJC Security.

1 FRANCES VELAZQUEZ

2 A No.

3 Q Did anyone accuse James Donohue of
4 saying that he would refuse to hire an airport
5 security agent or rehire them because the Port
6 Authority of New York and New Jersey would not
7 issue them a new ID badge when this was not true,
8 was not, in fact, true?

9 MR. WEISS: Objection as to form.

10 Read the question again.

11 (The requested portion of the record
12 was read back by the reporter.)

13 MR. WEISS: Objection as to form.

14 You may answer if you understand it.

15 A No.

16 Q Has any airport security agent said
17 that he believed that James Donohue is mentally
18 ill?

19 MR. WEISS: Okay. I don't understand
20 why that's even relevant. What does
21 Mr. Donohue's mental condition or any
22 complaint about his mental condition --

23 MR. TUCCIO: Answer to that is going
24 back to my initial complaint, that he
25 claimed that my going through the door on

1 FRANCES VELAZQUEZ

2 the morning of January 20, 2009, that this
3 caused the cancellation of all airplane
4 flights that morning, and he said that it
5 caused the clearing of all passengers from
6 Terminal 4, and he also said that the Port
7 Authority police would issue a warrant for
8 my arrest and for me to go home and wait for
9 them to come to me.

10 MR. WEISS: That's your allegation. I
11 understand that's your allegation.

12 MR. TUCCIO: If somebody is doing this,
13 you know, it makes me wonder about this
14 man's sanity.

15 MR. WEISS: Well, his sanity --

16 MR. TUCCIO: It makes me question his
17 sanity.

18 MR. WEISS: Sane or not, his mental
19 state is irrelevant in this action.

20 Q The question was, did any other airport
21 security agent question Mr. James Donohue's
22 sanity?

23 MR. WEISS: Off the record.

24 (Whereupon, a discussion was held off
25 the record.)

1 FRANCES VELAZQUEZ

2 MR. WEISS: You may answer.

3 A No.

4 MR. WEISS: Just so the record is
5 clear, you keep saying airport security
6 agent. You're talking about at FJC?

7 MR. TUCCIO: Yes. At FJC Security.

8 Q I want to thank you very much,
9 Ms. Velazquez, for coming to the deposition. I
10 have no further questions for you.

11 MR. WEISS: I have no questions of this
12 witness. The deposition is concluded?

13 MR. TUCCIO: Yes.

14 (Time noted: 12:28 p.m.)

15 * * * *

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2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)
5 COUNTY OF _____) ss:

6

7 I, FRANCES VELAZQUEZ, hereby certify that I
8 have read the transcript of my testimony taken under
9 oath in my deposition of September 12, 2013; that the
10 transcript is a true and complete record of my
11 testimony, and that the answers on the record as
12 given by me are true and correct.

13

14

FRANCES VELAZQUEZ

15

16

17 Subscribed and sworn to before me
18 this _____ day of _____ 2013.

19

(NOTARY PUBLIC)

20

21

22

23

24

25

C E R T I F I C A T E

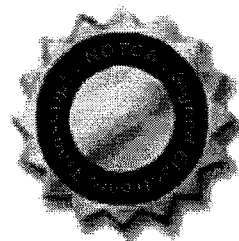
I, GINNETTE CORR, a shorthand reporter
and Notary Public within and for the State of
New York, do hereby certify:

That the witness, whose testimony is
hereinbefore set forth, was duly sworn by me,
and that such testimony is a true record of the
testimony given by such witness.

I further certify that I am not related
to any of the parties by blood or marriage, and
that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand.

Ginnette Corr



Ginnette Corr

Declaration of Scott A. Weiss
EXHIBIT: 8

County of Kings)
State of New York)

AFFIDAVIT

I, Samuel Tuccio, have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

My address is P.O. Box 285, Hicksville, New York 11802.

1. I was employed by FJC Security Services as a security guard from technically May 8, 2009, although I attended classes for about three weeks and didn't start working until the last week of May 2009.
2. There was a two-week class to familiarize ourselves with the airport and what the job was all about. There were approximately 25 people in the class. I also took a course to be screener and passed that test, and also a Firemen's test. My scores were about 94 or 96. I think I got a 96 on the Firemen's test.
3. The General Manager for FJC was James Donohoue. There were other supervisors but I don't remember their names at this time. I have that information at home. I had to pay dues to the Union, Special and Superior Officers Benevolent Association, and an initiation fee from the first paycheck. I was sent a card by the Union that had the names of four employees who were maybe Shop Stewards. Al Dooley is a Representative for Al Dooley.
4. I had filled out a form, when hired, requesting to work a day shift, and not the graveyard shift. I was first assigned to Terminal 4 at JFK, from 11 p.m. to 7 a.m., for about two months. I was posted at the public entrance to the Terminal on the fourth floor, and then the first floor, where people drove up in cars to pick up incoming passengers. I basically stood for about 8 hours at my first post.

5. About the first week of August, I was called into the office for a reassignment. I was reassigned to Building 20, where I was supposed to patrol the building outside for 8 hours/day, from about 2 to 10 p.m. I told them instead that I wanted to work part time, so I was assigned to Cargo Area in Terminal 4, first from 4 a.m. to 8 a.m., and then from 5 a.m. to 9 a.m., Monday through Friday. My job was to patrol the area where the checked bags were loaded onto carts to be taken to the planes so that no theft occurred from the bags. I was at that position from about the first week of August until my termination on January 20, 2010.
6. When I worked at Terminal 4, I got the job of walking outside, whereas other newer employees got the more desirable postings of walking inside the building. I called Al Dooley and complained, asking why I was always getting the least desirable job. All I got was the run-around. The secretary for the Union would tell me that Dooley would call me back. I called at least three times but never got a response from anyone. I assumed that he did nothing about it.
7. When I worked in the Cargo Area, there are big doors leading outside and there was no heat in the building until the day after Thanksgiving. I would call the IT office at the Airport and complain and was told that the heat would not go on until the temperature went below 35 degrees. I talked to my Site Supervisor, Alberto Cabanilla. He said that he could not take me out of the Cargo Area because that was my permanent assignment.
8. Other employees would ask for overtime, and generally they were the screeners who would then come in and work in the Cargo Area for about four more hours. Generally, those security guard would be on the jet bridge watching the passengers getting off the plane. After the passengers left, the security guard's job was to guard the airplane, make sure that the only people going on the plane were authorized to do so. Guards would also search the plane after passengers departed. The jet bridge or plane was usually heated, thus it was warm in the winter. On December 2 or 3, Cabanilla took me out of my Cargo Area assignment and told me that he wanted me to stand on the tarmac beside the airplane. It was cold. I did

this also on December 9, for about 3 ½ hours, when it was rained. I complained to Cabanilla and asked why I was being put outside when he had other new employees come in. He told me that he was rotating employees. I asked him why he wasn't giving me some of the assignments inside, such as inside the jet bridge or leading up to the control tower. I told him it was very unfair. I told him that I didn't want to be out there. He told me that nobody want to be out there. I sent a letter to the Union complaining. I got no response. I would call the office and the secretary would give me excuses, she'd say he was in the field, or in the meeting, or out sick, or in New Jersey. The letter I sent, along with the FedEx receipt, is attached as Exhibit 1. Enclosed in the letter was also a copy of an Employee Violation Notice, for supposedly not calling in sick on time, which I contested. They wrote me up as unexcused absence.

9. I called again on Sunday, December 20, telling the dispatcher that I couldn't come into work because of a bad snowstorm, there was no service on the LIRR. I was again written up.
10. On January 6, I was again asked to work outside by Cabanilla. I objected, stating that he had other employees in the Cargo Area that never went to work outside, and that other employees from other posts came and Cabanilla was not putting them outside. Cabanilla on a couple occasions gave me the option of not working that day instead of going outside, so I went home.
11. On January 19, 2010, I went to work and Cabanilla told me that I had to work outside. I told him that I was going home, I did not want to work outside because he was it too cold. He demanded my badge, and I didn't give it to him, I just walked out. As I was walking away, I heard him and saw him on his cell phone. I assumed he was calling the airport tower to invalidate my card. When I got to the door, I swiped my card and put in my pin, but access was denied, but I pushed the door anyway. The alarm can be heard on the second floor area. The alarm is loud enough to be heard through the hallway. I walked down from the second floor to the ground floor, and walked out through the front of Terminal 4, where the

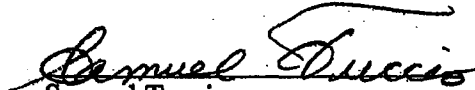
passengers walk out, and took a bus home. I got a telephone call at home to report to the FJC office, which I did, went in and turned in my badge. I spoke to Donohue, and told him that I felt that I had been treated unfairly, that I was assigned to treat outside, not at my post, while other people were given preferential treatment to work inside on these cold days. He told me that the other people that worked outside were better qualified and bilingual. He asked me to write out an Incident Report. He also told me that when I went outside, the alarm went off. He said that the entire Terminal 4 was evacuated and the flight was delayed for hours.

12. I was sent a termination letter by certified mail, which I picked up on January 26. The letter says that if I wanted to contest the termination, the Union Representative and I should contact FJC by February 2, 2010. I immediately called the Union; the secretary gave me the usual run around, saying he wasn't there, but then Dooley came on the phone. I told him that I had lost my job and wanted to talk to him. He asked me to fax him a copy of the letter and told me that he would get back to me. I faxed him a copy of the termination letter that same day, along with another written explanation of the events leading up to my termination, dated January 27. That is attached as Exhibit 2.
13. I called the Union the next day, the 27th of January. The secretary told me that Dooley was supposed to call me that afternoon. I never got a call from him.
14. On the 28th, I faxed to the Union a copy of my December 12 letter, which I had already sent, and is attached as Exhibit 1. Again I got no response.
15. I called the Union again and the secretary told me that there had been a death in the family, that he would be out for a few days. I asked to speak to some other representative, she told me that he was the only one who worked with FJC. She would sometimes say that she would email him and tell him that I had called.
16. On February 1, I went in person to the Union's office in Babylon. I asked to speak to Al Dooley. I told the secretary that I had until February 2 to

- meet with FJC. The secretary told me that Dooley wasn't there. I showed her the termination letter, she told me she would make a copy of it and put it on his desk. She came back after a few minutes and told me that this week, Dooley was having a medical procedure, but that she would email him and maybe he would call me from home. I told her that I just wanted to be able to sit down and discuss my situation. I never asked them to go to FJC and get my job back. Once again, I never got a response.
17. I called the Union again, she told me again that he was having a procedure but that she would send him an email and maybe he would contact me.
18. On February 9, I finally got a call from Al Dooley, he left a message asking me to call him back. I eventually spoke to him. He told me that he had contacted the General Manager to try to get my job back, and he said that because I had gone through the door which set off the alarm, the Port Authority Police would not allow me to go back to work. I sent him a letter two days later, attached as Exhibit 3. I ~~over~~^{never} got a response to the letter.
19. I don't know that all the other people assigned to the jet bridge had more seniority. But one employee told me that he had been there a few months less than me. He told me that he worked on the jet bridge on the United Arab Emirates terminal. I don't think that assignments to the jet bridge or control tower were on seniority.
20. There was another guard working in the Cargo Area with me, but that person was not a permanent person, it would be a different person everyday. I was the only one there on a permanent basis.
21. I don't speak Spanish. The first week I was assigned to the Cargo Area, I actually did some shifts in the jet bridge. I asked Cabanilla later if I could work there again, and he told me that I was permanently assigned to the Cargo Area. When some of the people came to work on the jet bridge, I would see Cabanilla explaining to them what they had to do, thus apparently it was their first time doing that task.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make any changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 6 pages, including this page. I fully understand its contents and I certify it is true and correct to the best of my knowledge and belief.


Samuel Tuccio

Subscribed and Sworn to before me at Brooklyn, New York, this May 7, 2010.


Ashok Bokde, Board Agent
National Labor Relations Board

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.